

A. No, sir.

Q. Did you have occasion to visit the garage in company of other persons during July, 1950, while the truck was there?

A. Yes, sir.

Q. And when did that occur, if you know—the date?

A. I don't know the date.

Q. Well, was it in the early part? Well, it was after the truck was put in?

762 A. It was after the truck was put in.

Q. How long after this telephone call from Mr. Gordon, would you say?

A. Well, I would say a matter of a week, a little more or less.

Q. Tell us what happened on that occasion.

A. I received a phone call from Mr. Gordon, and he asked me if I would be around awhile, and I told him that I would, and he said the people who have the truck back there want to get in the garage, "Will you let them in?"

And I told him that I would.

Q. And did they appear?

A. A young man appeared at the door and asked for Ken.

I answered the door at the time when the doorbell rang, and he asked for Ken, and I told him that I was Ken, and he said that Mr. Gordon had sent him out, and I said, "O. K., I will go with you."

Q. Did you know him prior to that time?

A. No, sir, I had never seen him.

Q. Did he indicate in any way that he had seen you or knew you?

A. No, sir.

763 Q. Now, this was at the front door of 215?

A. At 215.

Q. Did you immediately walk out with him?

A. Yes, I did.

Q. What did you see? Did you walk into the alley alongside of your building?

A. Yes, I did.

Q. What did you see there?

A. I passed a car with a man sitting in it.

Q. Did you know that man?

A. No, sir.

Q. And did he greet you in any fashion?

A. No, sir.

Q. Did he indicate in any manner that he knew you?

A. No, sir.

Q. And what happened then?

A. The young man and I went to the rear of the building, and I unlocked the door of the garage, and he went back for his car. He said he was going back to get his car.

Q. And did he bring the car around?

A. Yes, he did.

Q. And tell us what transpired at that point.

A. At that point the older man got out of the car
764 and said something to the younger man.

Q. Did you hear it?

A. No, I didn't hear it.

Q. Go ahead.

A. The young man went into the garage and pulled some cases off the back of the truck and set them or started setting them to the side. Then he got into the truck, and he asked me to give him a hand. So he handed me some cases, and I put them on the floor.

Q. Then what else happened?

A. He got out of the truck and started to carry a case out, and he said, "Why don't you drive the truck out and I will back the car in," and I said that I would, and I got into the car, into the truck, the keys were in it, and I pulled it out of the garage, turned it to the left, and parked it.

Q. How far down the alley did you pull it?

A. Oh, a matter of fifteen or twenty feet.

Q. Now, did you notice at that time whether the truck was completely covered? Were all sides of it, including the back, closed?

A. Yes, sir, the back, as I recall, had a piece of canvas hanging down.

Q. And what happened? I understand now that the
765 other man, the younger man, backed the Buick in there, into the garage?

A. Yes; he backed it in.

Q. What kind of a car was it, or do you know?

A. As I recall, it was a Buick. I don't remember much more about it. It was a large car, and very new. It was a new car of some kind.

Q. And what happened then?

A. He went back in, and the young man, the younger

man of the two, started to putting the film into the car, into the truck of the car; and when he finished that he started putting the film into the back seat of the car, and to expedite matters, I picked up a few of the cases and handed them to him until the automobile was loaded in the back seat.

Q. And then what occurred? Did they leave?

A. Yes, they left. I don't recall; just they got into the car and drove it right out, or whether one of them stood outside and guided it while it got out of the garage, but just prior to that the old man asked if it was all right to take the key that was still hanging in the lock, and I told him it was all right.

Then when they got the car out, I told them I would back the truck in and lock up, and I did that, backed 766 the truck up and closed the door and locked the padlock.

Q. Now, did you see the truck in the garage again after that?

A. I might have seen it. I don't recall whether I went into the garage during the time—I went in there at one time, but I think it was afterwards—yes, sir, I would say afterwards that it was in there.

Q. Now, what were these packages that you handled?

A. They were marked, the ones that I noticed were marked "Kodak."

Q. Something like the cases that were shown here in the courtroom?

A. Something like those, yes.

Q. And did you read the instructions particularly?

A. No, I didn't read them. I wasn't interested.

Q. Was there any discussion concerning the contents?

A. No, there wasn't.

Q. Was there any discussion concerning the destination of these men when they left the garage?

A. No, sir.

Q. Did they tell you their names?

A. No, sir.

Q. Had Mr. Gordon told you their names?

767 A. No, sir.

Q. In other words, you relied simply on the fact that he told you he was a friend of his?

A. That's right.

Q. Now, did you know where they were going when they left the garage?

A. No, sir.

Q. Now, did you know whether or not the material they had in the car when they left, and the material in the truck, was stolen?

A. No, sir.

Q. Was there any discussion with them or with anybody else prior to that time that would lead ~~me~~ to believe that was stolen?

A. No, sir.

Q. Did you own any of that material?

A. No, sir.

Q. Did you possess it or have control over its disposition?

A. No, sir.

Q. Did you receive any money in connection with that transaction?

A. No, sir.

Q. Was there any hope of compensation held out 768 to you to help them load the car or any—

A. No, sir.

Q. Now, how long did the truck stay in the garage?

A. I don't know how long it stayed there.

Q. Well, when did you discover that it was gone?

A. It was a couple of weeks later. I tried to get into the garage, and the lock—I couldn't work my key in the lock, and I tried the other door, and the inner door was locked, too.

Q. Let me ask you a question at this point: Just inside this pedestrian door on Government Exhibit 87, and to the right, is there a door that enters into the garage?

A. Yes, sir.

Q. And what means of security is there on that door, as far as a lock is concerned? Is there a lock or a locker—

A. There is a hasp for a padlock.

Q. You tried to get in it through that door a few days later?

A. Yes.

Q. About two weeks later?

A. About two weeks later, I would say.

Q. And you were unable to get in?

769 A. That's right.

Q. The door was secured?

A. That's right.

Q. And your key would not work in the big door?

A. That is right.

Q. What did you do about that?

A. I called Mr. Gordon and told him that I couldn't get in, and he said that maybe they had changed the lock.

Q. What did you do about that?

A. I had to get into the garage, and I took a hammer and broke the lock.

Q. Why did you have to get in?

A. I had some lumber in there that I needed, and had to bring it into the building.

770 Q. Now, you were present when Agent McCormick and Agent Higgs testified?

A. Yes.

Q. You recall the date, November 8th?

A. Yes.

Q. Do you recall the date of November 8th as the date that you met the FBI?

A. I recall it as both.

Mr. Downing: Objection, Your Honor, to the latter remark of counsel, 'the date he met the FBI.' I don't think that is a proper question.

The Court: Objection overruled.

By Mr. Walsh:

Q. Will you tell us what happened when you first saw Mr. Higgs that day?

A. Mr. Higgs in the company of another agent came to my door and had me identify myself, which I did, and asked if I would come with them to their office; that they wanted to talk to me for awhile.

I told them that I would if they would permit me to get dressed and they asked if they could come in and I invited them in.

When they were in they told me that they would. They did not want me to make any phone calls to anyone
771 whomsoever.

Q. Did they tell you you were under arrest?

A. No, they didn't.

Q. Go ahead.

A. When I was dressed I started out. I told them that I had to go over to the girls' club and check on the hot water heater which was giving us trouble the day before and asked them if that would be all right if we stopped there first and I made a check on the thing.

They agreed to it and dropped me over there.

By the way, when we came out of the door there was

another agent standing by the car in which I rode, making four in the car that I went in.

Q. Which way did you leave your building, the front entrance or back?

A. On the day we left through the back entrance.

Q. Are there two entrances to your living quarters?

A. Yes, there are.

Q. One out on Lake Shore Drive, is that right?

A. It is a Lake Shore Drive address; actually the entrance is on Division Street.

Q. On Division Street?

A. That is right.

Q. And the other is in the alley?

772 A. That is correct.

Q. And which do you usually use?

A. When I go to the girls' club normally I go out through the building to check for mail and go out that door, but when I am coming back from that part of town I come in and usually check for mail and packages and come in that door. If I am going west to Division Street and State or down to the subway, I use the back door.

Q. This day you used the alley, back door?

A. This day I used the alley.

Q. You drove—where did you drive? There were four of you, three agents and yourself?

A. That is right.

Q. Where did you go?

A. We got into the car which was parked on Stone, which is just east of the 1200 building, on the corner of Division and Lake Shore Drive. The car was parked on the west. I mean the street is just west of that building. The car was parked facing Division Street on the west side of Stone Street. We drove to State Street, down Division to State, up State to Erie Street. We turned left on Erie Street and came to the address 215; turned right into the

773 alley and parked beside the building.

Q. How many of you went into the building?

A. I went in with Agent Higgs and one other agent.

Q. Do you know who he was?

A. No. He is not here.

Q. Was there a conversation there at the building?

A. Yes, there was.

Q. Tell us what they said and what you said, what each of them said.

A. Now, Agent Higgs said—

Q. Tell us what Agent Higgs said.

A. Agent Higgs told me in that building—I said, “What is this all about?”

Agent Higgs said, “Don’t you know?”

And I said, “No, sir.”

He says, “You have been dealing in stolen films.”

I said, “I have not.”

He says, “We want you to come with us down. We are going to see about it.”

Then at that time, I said, “In that case, there is nothing further I can discuss about this case because you are accusing me of a crime and I do not want to say anything 774 that will be used against me as I have been told such things by attorneys,” and I refused to discuss that matter with him.

Then he got into the rooming house business, which I discussed freely with him as to the ownership and how it was operated and so forth, and other than that I don’t recall anything now.

Q. Then, where did you go? That is the substance of the conversation, is it, that occurred there?

A. Yes, sir.

Q. Did the other agent take part in it?

A. Oh yes, sir. By the way, before we got out of there, I did tell him there that I did not want to go down to their office under the circumstances unless I had counsel.

Mr. Higgs immediately got on the telephone and called Mr. McCormick.

Mr. McCormick came out and several others. By the time the affair was over there were at least three cars and at least six agents in the building or around the building. And at that time Mr. McCormick brought out a picture of me carrying a package into the building.

Q. This was at 215 East Erie?

A. This was at 215 East Erie Street.

775 Q. Did he say anything?

A. He asked me if that was me and I said Yes.

And he says, “We have been watching you and this is a picture of you carrying the film into the building.”

Q. Well, now, did you see the package?

A. Yes, sir.

Q. That you were carrying in this photograph?

A. Yes, sir.

Q. Was there anything about the package that would indicate that it was film?

A. No, sir.

Q. Or Kodak?

A. No, sir.

Q. Material?

A. No.

Q. Of any kind?

A. No, sir.

Q. And had you ever carried film into the building?

A. No, sir.

Q. What did you say to Mr. McCormick?

A. I told Mr. McCormick that was not film in there; it couldn't be because I had not carried any into the building.

776 He said, "Well, what is it?"

I told him it could be anything in the way of supplies that I frequently carry in through that particular door of which the picture was taken.

Q. Was there an automobile in that picture?

A. There was.

Q. What kind?

A. Oldsmobile.

Q. Whose car is that?

A. Mr. Gordon's.

Q. Your partner in the rooming house?

A. Yes, sir.

Q. Where did you go when you left 215—

The Court: I think this would be a good point to suspend. If you get into the other thing we will stop anyway in another few minutes. Don't you think it would be better to stop here?

We will recess until 2 o'clock this afternoon.

(Whereupon, at 12:30 o'clock p.m. a recess was taken until 2 o'clock p.m. of the same day, being Tuesday, June 5, 1951.)

777

Before Judge Campbell and a Jury,

Tuesday, June 5, 1951,

2:00 o'clock, p.m.

Court met pursuant to recess.

Present:

Honorable Otto Kerner, Jr.,

U. S. District Attorney,

By: Robert J. Downing,

Assistant U. S. Attorney,

On behalf of Government;

Mr. George F. Callaghan,

On behalf of Defendant Gordon;

Mr. Maurice J. Walsh,

On behalf of Defendant MacLeod.

778 (The following proceedings were had in the presence of the jury:)

The Clerk: No. 50 CR 641, United States vs. Gordon and MacLeod, on trial.

Mr. Walsh: Take the stand, Mr. MacLeod.

The Court: You may proceed, Mr. Walsh.

KENNETH J. MAC LEOD, one of the defendants herein, having been heretofore previously sworn, resumed the stand and testified further as follows:

Direct Examination (Continued)

By Mr. Walsh:

Q. You are the same Kenneth MacLeod who was testifying when court adjourned here, are you?

A. Yes, sir.

Q. Now, prior to leaving 215 East Erie with Agent Higgs, and his associates, did you make any telephone calls?

A. Yes, sir.

Q. On November 8th?

A. Yes, sir.

Q. And whom did you call?

A. I called an attorney.

Q. What was his name?

779 A. Michael Brodtkin.

Q. Did you tell him that the agents were there?

A. Yes, sir. I told him what the story was.

Q. Did he advise you?

A. Yes, sir. He advised me.

Q. Never mind. Did he, or did he not, advise you?

A. Yes, sir.

Q. After that—Incidentally, during the time that you were there, did Mr. Higgs or any of the agents that were with him ask you in effect this question:

"MacLeod, are you always this quiet?"

A. That question was asked later. The question that was asked me—

Mr. Downing: Objection, your Honor.

By Mr. Walsh:

Q. Was this question asked you in effect:

"Don't you even want to talk about the weather?"

A. Yes, sir.

Q. Then you went to the FBI office, is that right?

A. Yes, sir.

Q. And how many agents went with you then?

A. There was a man driving the car. I don't know whether he was an agent or a chauffeur. This agent—

780 Q. Mr. McCormick?

A. Mr. McCormick sat beside me in the back seat and there was another agent in the front seat.

Q. Now, you arrived, what time did you arrive at the Bureau office, if you know?

A. I don't know.

Q. Well, what occurred there?

A. I was asked to explain why there was some stolen film in the garage.

Q. What did you say?

A. I told them I didn't care to talk about anything unless I had an attorney in my presence.

Q. And how long did your conversation with them continue?

A. I was there, oh, I would imagine two or three hours.

Q. Were your fingerprints taken?

A. Yes, sir.

Q. At the FBI office?

A. Yes, sir.

Q. A photograph taken?

A. Yes, sir.

Q. Now, during that time did they show you any photographs at the FBI office?

A. No, sir.

781 Q. Did they show you a picture of Mr. Marshall who testified here the other day?

A. No, sir.

782 Q. Now, when Mr. Marshall took the stand, did you know him?

A. No, sir.

Q. Well, having heard him testify, do you now recog-

nize him as the person who called on you on July 27th or thereabouts, late in July?

A. Yes.

Q. Do you know Swartz, this Swartz that has been referred to here?

A. No, sir.

Q. Did anybody show you a picture of him at the FBI office?

A. No, sir.

Q. Do you know Swartz now?

A. No, sir.

Q. Do you know whether Swartz is the man that was present that day with Marshall?

A. I don't know, sir.

Q. He could be, is that it?

A. He could be.

Q. Now, after you left the FBI office, you were there about two or three hours, you say?

A. Yes, sir.

Q. And where did you go then?

783 A. I came over to this building.

Q. And still in the company of the Agents?

A. In the company of Mr. Higgs and one other Agent.

Q. And where did you go?

A. I went to the Commissioner's office.

Q. And while you were there, was a complaint read to you?

A. Yes, sir.

Q. By United States Commissioner Edwin Walker?

A. Yes, sir.

Q. Do you know whether or not that complaint was signed by Walter M. Higgs, Jr.?

A. Yes, sir.

Q. And who was present at that hearing?

A. Mr. Brodtkin, Mr. Downing, a woman clerk of some kind, the Commissioner, and as I recall to the rear of the room one or two other men.

Q. What happened to the case at that point?

Mr. Downing: If your Honor please, that is immaterial insofar as this suit is concerned.

The Court: Yes, the record will show it. What was the date of the arraignment before the Commissioner?

Mr. Walsh: November 8.

784 By Mr. Walsh:

Q. Now, did you ever on any other occasion see either Marshall or Swartz?

A. No, sir.

Q. You are not familiar with the details of Mr. Gordon's business on East Adams Street, are you?

A. No, sir.

Q. You have no connection with that business?

A. No, sir.

Q. You have never done any business with Mr. Swartz, have you?

A. No, sir.

Q. Either directly or indirectly?

A. No, sir.

Q. Now, did you on July 20, 1950, have in your possession film which you knew to be stolen?

A. No, sir.

Q. Did you on July 20, 1950, transport or cause to be transported in interstate commerce from Chicago to Detroit, Michigan, any film which you knew to have been stolen?

A. No, sir.

Q. In the value of \$5,000 or any amount?

A. No, sir.

785 Q. Did you on July 27 have in your possession film which you knew to be stolen?

A. No, sir.

Q. Did you on July 27 transport or cause to be transported in interstate commerce film which you knew to be stolen?

A. No, sir.

Mr. Walsh: You may cross examine.

Mr. Downing: Just a moment, your Honor.

Cross Examination

By Mr. Downing:

Q. Mr. MacLeod, I believe you testified that you reside at 1150 North Lake Shore Drive.

A. Yes, sir.

Q. You resided there for about three years, you said?

A. Approximately.

Q. And you were residing there back in July of 1950?

A. Yes, sir.

Q. And you were residing there again in November of 1950, or still in November, 1950?

A. Yes, sir.

Q. Now, these photographs, Government's Exhibits 79, does that illustrate a portion of the building in which
786 your residence is at 1150 North Lake Shore Drive?

A. The building to the left in the picture.

Q. And Government's Exhibit 80, does that represent a portion of your building in the entrance, one of the entrances to your apartment in the building?

A. The building to the right does.

Q. And Government's Exhibit 81, does that represent a portion of the building in which you reside?

A. The building to the left does.

Q. And it also illustrates one of the entrances to your apartment, is that right, sir?

A. Yes, sir.

Q. Now, with respect to Government's Exhibit 82, does the building to the left and to the right between the two alleys, adjoining the two alleys—does that represent a portion of the apartment in which you live?

A. Yes, sir.

Q. And this one window which is right up above the paper, what appears to be paper in the photograph, right at the corner of the two alleys, is that a window in your apartment, or one of the windows in your apartment?

A. Yes, sir.

Q. I believe you testified concerning this property
787 at 215-217 East Erie Street, that it was leased, that property, at the present time, is that right?

A. Yes, sir.

Q. And in connection with the photographs which were shown to you this morning, there is illustrated therein the garage which is in a portion of that property, is that right, sir?

A. That is correct.

Q. And it was in that garage, that double door garage in which this truck was, at the time you saw it, on July
27, is that right, sir?

A. Yes, sir.

Q. Now, that date, July 27, that is your best recollection? It was on or about that date?

A. I haven't the slightest idea it was about that date.

Q. Would you say it was on or about that date?

A. I wouldn't deny that it was that date. I wouldn't know. It was probably that date, from the testimony that has been given.

Q. Anyway, on that date it was that you saw Mr. Marshall who was a witness here, and in addition a Mr. Al Swartz?

A. I don't know about Mr. Swartz, but I saw Mr. Marshall there.

Q. Well, there was a second man along with Mr. Marshall?

A. That's right.

Q. And they came there with a note which Mr. Marshall showed you, this Government's Exhibit 83, is that right?

Mr. Walsh: I object to this. It is assuming something not in evidence.

Mr. Downing: This is cross examination.

The Court: If Mr. Marshall didn't show it to him, he may so indicate.

By Mr. Downing:

Q. Did Mr. Marshall show you this note on the date that he came there?

A. No, sir.

Q. He did not show that to you at that time?

A. No, sir.

Q. At that time that he came there, when was the last time that you had been in the garage prior to that day?

A. I wouldn't know that.

Q. Well, you had a key to the garage?

A. That's right.

Q. And you kept articles and various things in the garage, I believe you testified. Is that right, sir?

A. That's right.

789 Q. And did you have occasion in connection with the operation of this building to frequently go into the garage?

A. Not frequently, but occasionally.

Q. Well, what is your recollection as to approximately how many times in a week you would go in back there, in the summer of 1959?

A. I might have gone in there once a week, and maybe some weeks maybe every day, and I might not have gone in there for two weeks.

Q. There could be a period of time in which you might be there every day, and then again—

A. There could have been.

Q. So you wouldn't say that just prior to July 27th that you had not been in there for two weeks, or that you had been in there every day prior to that?

A. I was not in there every day just prior to that.
790 Q. Well, how do you recall it?

A. Because sometime before then I received this call from Mr. Gordon and he told me that someone was going to be out with a truck and that was approximately a week before then and I do not recall seeing that truck prior to that day.

Q. And did he tell you who was coming out with the truck?

A. No, he didn't.

Q. What did you do with respect to—

Mr. Downing: Strike that.

By Mr. Downing:

Q. General, did you keep the garage door or this double door locked?

A. Yes, sir.

Q. What did you do with respect to making it available for bringing the truck in at that time?

A. I went to the rear of the building, unlocked the lock, and left it hanging in the hasp.

Q. Did you customarily do that when people wanted to come into the garage?

A. No.

Q. Generally speaking, it was always locked, is that right?

791 A. Generally speaking, it was.

Q. And in this particular instance, you unlocked it and left the lock hanging in the hasp there?

A. I did.

Q. Thereafter, did you check to see whether the garage was still locked?

A. No.

Q. When did you next go back to check the condition of the garage with respect to whether or not it was locked?

A. I didn't.

Q. You didn't go back after you unlocked the lock until approximately the day, until exactly the day that these two men came there, approximately a week later?

A. I might have passed by there. That I do not recall. I have no reason to recall it.

Q. You didn't specifically go back to see whether the garage was locked or unlocked?

A. That is right.

Q. Approximately what time of the day was it when you left the garage unlocked?

A. It was very late in the afternoon.

Q. Did you remain there on the premises on that day?

A. No, I didn't.

792 Q. What day of the week was that, do you recall?

A. No, I do not recall.

Q. Approximately what hours back in the summer of 1950 were you around the premises of 215 and 217 East Erie?

A. That is a question that is impossible to answer. I was there every day at no particular time, but normally I would say that you could find me at that address sometime after 11 o'clock in the morning, until oh, sometimes two, sometimes five or six, depending on how much work I had to do.

Q. It was your custom to go to the building each day, is that right?

A. That is right.

Q. That would include week-ends, Saturdays and Sundays?

A. If there was anything to do.

Q. And by things to do, what type of work did you do around the premises?

A. I came there, checked the money, rented rooms on occasion, made repairs, went out for supplies, made repairs to electrical appliances, in some cases minor plumbing.

Q. You generally looked over the entire property, is that right?

A. That is correct.

793 Q. You had an operator there by the name of Miss Jones, is that right?

A. That is right.

Q. She actually operated ~~the~~ place from day to day, is that right?

A. No. She was there to answer the door bell and the telephone.

Q. She was sort of like a switchboard operator, is that right?

A. You might say that is it.

Q. You actually handled the renting of the premises, that is, for the rooms?

A. Not in every case, because I was not there.

Q. You did watch and care for the maintenance and upkeep of the building?

A. Not all of it myself. I had a janitor there who did some. He was not any experienced electrician. He was an

elderly man. I had to show him many things to do, a lot of things he couldn't do.

Q. That did cause you then to go around the building and assist in the upkeep and observe and supervise in the upkeep of the building, is that right?

A. That is correct.

Q. Now, do you recall for the week prior to the 794 time that you unlocked this door, unlocked the lock rather, and left it hanging there in the hasp, how many times you were in that garage during that week previous to that?

A. No, I don't.

Q. Would you say that you were not in that garage at that particular time during that week prior to that time?

A. I would say that I don't recall being in the garage from the day Mr. Gordon called me about the truck coming over until the day I went in with the men who came out.

Q. Now, the week prior to when Mr. Gordon called you, do you remember being in the garage?

A. I do not recall.

Q. Would you say you were in the garage during the week prior to the time Mr. Gordon first called you about the men coming out?

A. I would not say I was or I was not. I can't remember that far back on that particular day.

Q. At this time you don't remember?

A. I don't remember.

Q. When Mr. Gordon called you, did he tell you what kind of a truck was coming up with this merchandise or whatever it was that they were bringing?

795 A. He did not tell me they were bringing any merchandise.

Q. What did he tell you?

A. He told me a truck.

Q. All right.

A. He described it to me as a newspaper delivery truck.

Q. All right. Is that all he told you about the truck?

A. That is all.

Q. He did not tell you who was bringing it up or what was, if anything, on the inside?

A. No, sir.

Q. Did he tell you what the license of the truck was?

A. No, sir.

Q. Did he tell you what the license of the truck was?

A. No, sir.

Q. Now, when did you first see the truck?

A. I can't give you a date.

Q. Well, in relation to the events about which you have testified, when was it?

A. The day that Mr. Marshall came to the door.

Q. That was the day that both Mr. Marshall and another man came there, about which you have previously testified?

A. That is correct.

796 Q. That is the date that you first saw this truck, is that right?

A. Yes, sir.

Q. Is that the first time that you had occasion to go into the garage following the time that you left the lock open there on the hasp that you have testified, a week prior to that?

A. Yes, sir.

Q. When you went around to the garage who opened the garage door?

A. I did.

Q. Did Mr. Marshall have a key to the garage?

A. No.

Q. Did this other gentleman have a key to the garage?

A. No, sir.

Q. So that you opened the garage door at that time?

A. That is right.

Q. You had to unlock it at that time, is that right?

A. That is right.

Q. Now, when you went into the garage, what did you see inside?

A. A truck.

Q. Well, will you describe the truck that you saw?

A. It was an old truck. I couldn't state how many 797 years old.

Q. Was it a panel or stake body?

A. I don't know what you would call a stake body. A panel if it was enclosed the sides and top, it was.

Q. Something similar to newspaper trucks on the street?

A. Something like a Daily News, small truck that runs around.

Q. Was it about that size?

A. About that size.

Q. By Daily News, you mean the Chicago Daily News newspaper trucks, is that right?

A. Yes.

Q. What did you do after you went on the inside of the premises?

A. I watched for a minute.

Q. What took place? What did you watch?

A. Mr. Marshall pulling some cases off the back end of the truck and setting them off the side.

Q. Did you have any conversation with Mr. Marshall at that time?

A. No.

Q. Neither of you said anything at that time?

A. No.

798 Q. How many cases did he pull off from the back of the truck to the side?

A. Well, I don't recall.

Q. What is your best estimate at this time?

A. It looked like a stack about the size you had up here the other day. They were full cases that were sitting there.

Q. You mean ten full cases?

A. I imagine about ten, more or less.

Q. Approximately?

A. It could have been.

Q. Did you see any inscription on the cases?

A. Yes.

Q. What was the inscription you saw on the cases?

A. Kodak.

Q. Is that the only inscription you saw?

A. No.

Q. What else did you see?

A. I saw some black print.

Q. Black print similar to the type that is on the cases in the court room. Did Mr. Marshall pull all ten of those?

A. Yes.

Q. Did he pull all the ten cases out of the truck and put them on the floor inside the garage?

799 A. Those that I just now described.

Q. Were some more placed on the floor?

A. Yes.

Q. Who placed those on the floor?

A. I placed those on the floor.

Q. Did he ask you to assist him?

A. Yes, he did.

Q. What did he ask you at that time?

A. He got into the truck. He said, "Will you give me a hand?"

I said, "Sure."

Q. All right, what took place?

A. He passed out some more. I set them down on the stack.

Q. Approximately how many did he pass out, do you recall?

A. No, I do not recall.

Q. Was it equal to the number that was already sitting out there on the garage floor?

A. I don't think so. I don't know.

Q. You would say it was less?

A. I wouldn't say it was more or less.

Q. You do not have any present recollection?

800 A. No.

Q. Were those also Kodak film boxes?

A. I don't know. They might have been.

Q. Would you say that they were or were not?

A. I would not say they were. I would not say they were not.

Q. They were similar to the type of box that had already been placed out there by Marshall?

A. I would not say they were not.

Q. You do not have any present recollection, is that right?

A. No.

Q. And then what took place after all these cases were passed out inside of the truck to you? Did you place them on the floor there in the garage?

A. I did.

Q. What happened?

A. Mr. Marshall asked me, he said, "If you will drive the truck out, I will back my car in."

Q. Did you accommodate him?

A. I did.

Q. You got in and drove the car or truck out, is that right?

A. That is right.

801 Q. The keys were in the truck, were they?

A. They were.

Q. Mr. Marshall, when you pulled the truck out, Mr. Marshall went around to his car, did he?

A. Yes, he did.

Q. Where was the second individual at that time?

A. He was standing around in general. I couldn't say where he was. I did not pay a great deal of attention to him.

Q. Did he get into the car or truck when you either moved the truck out or Marshall pulled the car in?

A. He didn't get on the truck with me.

Q. He didn't get on the truck with you?

A. No.

Q. Did you have any conversation with him at all?

A. Yes.

Q. What was the conversation?

A. He asked me if I could take the key that was still in the lock.

Q. In what lock?

A. In the padlock.

Q. Was there a key in the padlock?

A. Yes.

802 Q. Was that the key that you brought and opened up the door with at that time?

A. Yes.

Q. Did Mr. Swartz ask you, or this other man ask you about some figurines that were in the garage at that time?

A. I don't recall.

Q. Did you have some figurines in the garage at that time?

A. There could have been.

Q. You had had some figurines in the garage around that time, is that right?

A. I don't recall whether they were there then or not.

Q. What is your best recollection? Would you say you did not have any at or about that time?

A. No.

Q. You don't recall one way or the other definitely, is that right?

A. No, I don't.

Q. And then, after the car, after you had this conversation with Mr. Swartz, or this other man, about this key, what happened to the key?

A. He took it.

Q. He took the key?

803 A. Yes.

Q. Did you have any other key to the garage?

A. Yes, I did.

Q. To the padlock there on the hasp?

A. Yes.

Q. And then, after the Buick was pulled into the garage, then what took place?

A. The younger man started, he put the film into the back end of the truck. I was watching him. Then when he started putting it into the back seat I helped him.

Q. You helped him load this merchandise into the back seat?

A. I handed it to him. He put it into the back seat.

Q. Approximately how much of the back seat was filled with the film at that time? Come up to, would you say the window level?

A. About the window level.

Q. Approximately the window level?

A. They were sitting on the floor and on the back seat?

Q. Did he put some in the trunk too?

A. Yes.

Q. And then what happened after the film was placed into the car?

804 A. They left.

Q. Approximately how long were they there that entire period of time?

A. No more than say, fifteen minutes or so.

Q. Did you have any conversation with him when you finished loading the film?

A. No, except that I said that I backed the truck in and lock it, if they wanted.

Q. You told that to the man?

A. I told that to the man.

Q. What did they say?

A. They said O.K.

Q. Was there some film still on the truck at that time?

A. I don't know.

Q. You can't recall? Would you say there was?

A. I don't know.

Q. Would you say there wasn't?

A. I didn't see into the back end of the truck.

Q. You didn't see into the back end?

A. No.

Q. Did you go into the back end at the time that Mr. Marshall was handing out the cases to you?

A. No, I didn't.

805 Q. Where were you at that time?

A. I was at the side of the truck. The truck was backed into the garage so that it was clear. You couldn't

stand in back there and stack the film. It had to be set to the side and that was why he asked me to help him.

Q. How did Marshall get the film out when he was taking it out alone?

A. He was taking the film that was sitting on the back end.

Q. On the gate back there, is that right?

A. I don't know whether it was on the gate or not.

Q. You did not look into the truck at all, is that right?

A. No, sir.

Q. That is into the back, the panel part of the truck?

Mr. Walsh: I think that has been answered.

By The Witness:

A. No.

The Court: That may stand.

By Mr. Downing:

Q. Now, when the truck was backed into the garage, had the men departed by that time?

A. Yes.

Q. They had pulled out and that was the last you saw of them?

A. That is right.

Q. After they pulled out, you went over and backed the truck in, is that right?

A. Yes.

Q. And you just left the keys in the truck?

A. Yes.

Q. Then, you locked the garage door?

A. Yes.

Q. Then, I believe you said that you did not have occasion to go back into the garage again for two weeks, is that right?

A. No, sir, I didn't say that.

Q. Maybe I misunderstood you. What did you say about that?

A. I said I am not sure I did not go in there. I have a recollection of probably having gone in there to take some lumber out, because, as a matter of fact, I am sure of it because I had to lift it over the front end of the truck to get it out.

Q. Approximately how long was that after this date?

A. It might have been the next day or so.

Q. Do you recall any other incident of going in there?

807 A. No.

Q. So that the only time within that two weeks period that you had gone into the garage, that is two weeks following the date to which you have described when the Buick was brought into the garage?

A. Would you repeat that?

Q. Let me rephrase it.

After the date that Mr. Marshall was there that you recall when the Buick was backed into the garage, I say at the time you went in and brought the lumber in or out of the garage, were you in there at all within two weeks from the time Marshall was there?

A. Not that I recall.

Q. That was the only time that you recall going in there?

A. Yes.

Q. At the time you went in there with the lumber or for the lumber, whichever it was, you unlocked the door yourself at that time, is that right?

A. Yes, sir.

Q. Now, you recall with respect to this truck, when did you last see it in this garage?

A. That would have been the last time.

Q. And that was a day or two after?

808 A. That is right.

Q. Marshall was there, is that right?

A. That is right.

Q. Was this somewhere around the 29th of July that Marshall was there on the 27th?

A. He was there on the 27th, that is correct.

Q. Approximately how long was it after the date, that is the 29th, was it when you noticed that the truck was gone?

A. I would say a couple of weeks or so.

Q. Two weeks from then?

A. Yes.

Q. That would be some time around the 12th of August, approximately, just approximately speaking?

A. Approximately, I would imagine.

Q. And did you go into the garage at that time when you first noticed that the truck was gone?

A. Yes.

Q. What did you do when you discovered that the truck was gone? Did you notify Mr. Gordon?

A. Yes. Told him it was gone.

Q. Did he tell you anything about his knowing that the truck had been removed from the garage?

A. No, sir.

Q. What did Mr. Gordon tell you at the time you 809 told him?

A. He said they probably have the truck.

Q. Did he mention any names?

A. No.

Q. Did he say anything else about his knowing anything about the truck at that time?

A. No, sir.

Q. Did he tell you anything about his knowing about their coming after the truck?

A. No, sir.

Q. And after that time did you and Mr. Gordon ever discuss that truck again?

A. I think I asked him if he ever collected the rent for it.

Q. How much rent did you charge for it?

A. I did not charge anything.

Q. How much did Mr. Gordon charge, if you know?

A. He was supposed to ask them \$20.

Q. How do you know that?

A. He told me.

Q. When did he tell you that?

A. Oh, I don't recall whether it was a day or so later, or when.

Q. A day or so later from when?

A. It is possible, I don't know.

810 Q. A day or so later from when?

A. From the date I left the garage door open.

Q. That is the first time you knew of the truck coming in there, is that right?

A. Yes.

Q. Did he tell you to collect the rent or that he would collect the rent?

A. He didn't say.

Q. He just left that part of it in the air, is that right?

A. I assumed he would collect it. He had arranged for the space.

Q. Did he tell you the name of the renter of the space at that time?

A. No.

Q. Did you see any address on the truck?

A. Yes.

Q. What was the address on the truck?

A. I don't recall.

Q. To refresh your recollection, was it 4111 South Pulaski?

A. I would not remember that.

Q. You would not say it was, or was not?

A. That is right.

811 Q. But it had an Illinois license plate on it?

A. I don't know.

Q. You recall as you have testified having met Mr. McCormick and Mr. Higgs on the 8th of November, is that right?

A. That is right.

Q. You went down to the office of the FBI on the late morning of the 8th of November, is that right?

A. The late morning or early afternoon.

Q. Sometime around noon?

A. Yes.

Q. On the 8th of November?

A. Yes.

Q. After you reached the office of the FBI on that day, you, Higgs and McCormick had a conversation at that office, is that right?

A. That is right.

Q. They asked you some questions about whether or not there had been any film in the garage at 215 to 217 East Erie, is that right? Do you recall that?

A. They asked me if there was any stolen film in the garage.

Q. Is that the only conversation they had?

A. That is the conversation I distinctly remember.

Q. Do you recall their asking you as to whether or not there was any film in the garage in July of 1950?

A. Yes, they probably asked that question.

Q. Did you tell them that there was film in the garage?

A. I did not answer their question. I told them I desired counsel. They charged me with a crime. I desired counsel.

Q. They had charged you with a crime?

A. That is correct.

Q. Did you give that answer to each and every question they propounded to you on that day?

A. No.

Q. Now, you did permit yourself to be photographed at that time?

A. I did not permit myself. I was told to go in and get my fingerprints and photograph taken.

Q. You were in there and were fingerprinted and photographed, is that right?

A. That is correct.

Q. You thereafter met Mr. Higgs at the Palmer House two or three days later and you signed the card, is that right?

A. That is right.

Q. Nobody forced you to meet him at the Palmer 813 House, did they?

A. No.

Q. You went there voluntarily, is that right, sir?

A. That is correct.

Q. Now, at the time on November 8, 1950, did they ask you whether or not you knew a Mr. James Marshall?

A. They did.

Q. What did you answer to that?

A. I did not.

Q. Did they show you any photographs of James Marshall?

A. No, sir.

Q. Did they show you any photographs at any time on that day?

A. Yes, they did.

Q. Where did they show you the photograph?

A. They showed me a photograph of 215 East Erie. It was a photograph of myself.

Q. Who showed you that photograph?

A. This gentleman.

Q. By this gentleman, you are referring to Mr. McCormick?

A. He pulled it out of an envelope in which there were several pictures.

Q. Let us get the record. Was this gentleman you 814 are referring to Mr. McCormick, is that right? That is the gentleman sitting right behind me at counsel table?

A. That is correct.

Mr. Walsh: Let the record show he is identifying Mr. McCormick.

The Court: Let the record so show.

By Mr. Downing:

Q. That is of 215 East Erie Street that he pulled this photograph out and showed it to you, is that right?

A. That is right.

Q. Did he only show you one photograph there?

A. That is right.

Q. I believe you testified that that was a photograph on which you were taking something out of Kenneth Gordon's car, is that right?

A. That is right.

Q. Do you know when that photograph was taken?

A. I have not the slightest idea.

Q. Was that taken in the rear of 215 East Erie Street?

A. That is right.

Q. Now, at the office of the FBI they did not show you in there any photographs, is that right?

815 A. They did not.

Q. Was that the only time on November 8th that they showed you any photographs here at 215 East Erie St.?

A. That is right.

Mr. Callaghan: I submit that he is repetitious.

The Court: Overruled.

Mr. Walsh: These things have been answered.

The Court: Overruled. Proceed.

By Mr. Downing:

Q. I believe you testified on direct examination that someone told you that they did not want you to make any 'phone call whatsoever.

Do you recall their making that statement?

A. That is correct.

Q. Who told you that?

A. Mr. Higgs.

Q. Where did he tell you that?

A. In my apartment.

Q. Thereafter, however, they did not object to your calling this Mr. Brodtkin, as you testified, is that right?

A. They had no—they objected, yes, but it did not do them any good.

Q. They objected. What did they say to you?

816 A. They said, "Wait until we call Mack."

Q. Who said that?

A. Mr. Higgs.

Q. Where did he say that at that time?

A. He said that in the front room at 215 East Erie Street.

817 Q. Who all was present at that time?

A. Miss Jones, Mr. Higgs and one other agent.

Q. Mr. McCormick wasn't present at that time?

A. No, he wasn't there.

Q. You thereafter went and called Mr. Brodtkin, is that his name?

A. Yes, I did.

Q. That was while you were at 215 East Erie?

A. Yes, sir.

Q. And that was before you went down to the FBI office, is that right?

A. Yes, sir.

Q. Now, when you made the statement that you didn't care to talk unless your attorney was present, who did you make that statement to?

A. Mr. Higgs.

Q. And where did you make that statement?

A. 215 East Erie Street, and at the FBI offices.

Q. And who was present at the FBI office at that time you made that statement?

A. Mr. Higgs, and besides Mr. Higgs was the agent that was with me at the time that I was asked to go down to the FBI office, at my home.

Q. You don't recall his name, do you?

818 A. No, I don't recall his name.

Q. Who else was there at the office?

A. I do not know whether Mr.—I cannot remember this gentleman's name.

Q. McCormick?

A. McCormick was in the room at the time or not, nor a third—I mean a fourth man who came in and out. I don't know whether he was in there at that specific time or not.

Q. You don't know this other man's name that you are referring to, do you?

A. No, he has been in the courtroom, though.

Q. Were you introduced to him at that time?

A. No, I wasn't.

Q. Do you see him in the courtroom at the present time?

A. No, he is not here now.

Q. He is not here at the present time. And with respect to all of the questions that were asked you at the FBI office, I am not quite clear, did you give them this answer that you didn't care to talk unless you had your attorney present?

A. I told them that once or twice, and the rest of the time I answered nothing; I just remained silent.

Q. What did you call answering questions to, if 819 any? Did you answer any questions at the office?

A. None whatsoever.

Q. So there wasn't anything that you said at the office of the FBI?

A. Not in connection with the film that they accused me of having possession of.

Q. Well, how about your association at 215 East Erie Street, did you talk to them about that?

A. Yes, I did.

Q. And you told them about your relationship, that is in so far as business transactions with Mr. Gordon in the operation of 215 to 217 East Erie Street?

A. That's right.

Q. And is that in substance as Mr. McCormick and Mr. Higgs have testified to here?

Mr. Walsh: I object to that because they didn't testify to the same thing.

The Court: State your question in a direct form, rather than paraphrasing the testimony of another witness.

Mr. Downing: All right, Your Honor.

By Mr. Downing:

Q. Now, with respect to your interest at 215-217 East Erie, at that time—that is in July of 1950 and in 820 November of 1950—you were in partnership with Mr.

Gordon, as Mr. McCormick and Mr. Higgs testified, is that right, Sir?

A. Yes, I was; not as they testified, but I was in partnership with him.

Q. Was your partnership arrangement different than they testified?

A. How do you mean?

Q. You said "not as they testified." To what do you refer?

Mr. Walsh: I object. They didn't testify to the same thing with regard to the division of money.

The Court: If he doesn't understand the question, he may say so.

Mr. Walsh: I object unless counsel states what they testified.

Mr. Downing: If Your Honor please, the answer to the question before my question, it appeared this man said

that these men, that this witness said, "Not as they testified." Now, if it is different, he must have something in mind. He must have something in mind. So I want—

821 The Court: I will sustain an objection to the last question. Do you have another?

By Mr. Downing:

Q. What were the details of your partnership arrangement with Mr. Gordon?

A. We were equal partners.

Q. By that, do you mean that you shared the divided profits fifty-fifty?

A. That's right.

Q. And that was the relationship that existed both in June, July and November, 1950?

A. That's right.

Q. No, at the office there of the FBI, were you asked with respect to whether or not there was a truck in your garage in July of 1950?

A. Where was that question asked?

(Question read.)

By The Witness:

A. No.

By Mr. Downing:

Q. As a matter of fact, didn't you tell Mr. McCormick and Mr. Higgs that Mr. White had rented the garage for \$20 a month?

A. Yes, sir.

822 Q. Well, were you asked that question there?

A. Where?

Q. At the office of the FBI?

A. No, sir.

Q. Where did you tell them that?

A. 215 East Erie Street.

Q. Is that the only place that you gave them that information?

A. That's right.

Q. And was Mr. Higgs and Mr. McCormick both present at the time, if you recall?

A. Mr. Higgs was present, and Mr. McCormick, I am not sure of.

Q. And you didn't tell Mr. McCormick anything about this at the office of the FBI on November 8th, or when you went to the office of the FBI on November 8th?

A. No, sir.

Mr. Downing: That is all, Your Honor.

The Court: Is there any redirect?

Mr. Walsh: There is one question that I should have asked on direct.

The Court: I will give you leave to ask it.

823

Redirect Examination

By Mr. Walsh:

Q. Mr. MacLeod, were you ever convicted of a felony?

A. No, sir.

Mr. Walsh: I think there is nothing further, Your Honor.

The Court: Yes, is there anything further on recross?

Mr. Downing: No, Your Honor.

The Court: That is all. You may step down.
(Witness excused.)

The Court: Any further evidence on behalf of the defendants?

Mr. Walsh: We have some exhibits.

The Court: You had another witness that was coming?

Mr. Callaghan: No, sir, I am not going to have a further witness.

The Court: Any further witnesses on behalf of the defendant Gordon?

Mr. Callaghan: No, Your Honor.

The Court: And on behalf of the defendant MacLeod?

Mr. Walsh: Not on behalf of the defendant Mac-

824 Leod.

Mr. Callaghan: The defendants now offer in evidence the document which has heretofore been marked Defendants' Exhibit 1 for identification.

The Court: That is the price list?

Mr. Callaghan: Yes.

825 Mr. Walsh: There is one page in the beginning that is an explanation and talks about discounts and things.

The Court: I won't admit that.

Mr. Walsh: The witness didn't testify, but he did say there were discounts.

The Court: I will not admit that. You put on evidence of the discounts. I will admit the pages that has the prices described in this indictment, if you can find that page or pages.

Mr. Callaghan: Pages 4 and 5.

I think we ought to agree that those are the material ones before we pull them out.

Mr. Walsh: Pages 4 and 5 are the pages, as far as that is concerned, 4 and 5.

Mr. Callaghan: Yes.

The Court: You are offering pages 4 and 5 of Defendants' Exhibit 1, is that correct?

Mr. Walsh: That's right, Your Honor.

The Court: Very well.

Mr. Walsh: Together with the first sheet that is in the book showing the title, "Condensed Price List Corrected to February 1, 1949, Eastman Kodak Company," and then the explanation of what these items contained on 4 and 5 mean.

The Court: That will not be received. Let me see pages 4 and 5.

Mr. Downing: I make this objection to pages 4 and 5 being received. There were numerous types of film listed on pages 4 and 5. Now, with the exception of the film with which we are concerned, I see no reason for all of the rest of that material going in. I have no objections to the prices pertaining to the film with which we are concerned.

The Court: You want the entire pages 4 and 5, together, to go in, do you?

Mr. Callaghan: Yes, Your Honor.

The Court: If they go in on page 4, page 3 which is on the reverse side of page 4, and page 6 is on the reverse side of page 5, and that would also go in. However, the jury will have before it the indictment which describes the type of film that we are concerned with here, and I should think they would be able to pick out which ones we are concerned with.

Mr. Downing: I don't mean from that standpoint. My point of view is that there is a lot of other material—

Mr. Callaghan: There is nothing harmful. It is all just prices of various kinds of film.

The Court: Well, the defendants offer pages 4 and 5, and I will admit them, and Mr. Walsh, you cross out the pages 3 and 6 just with an X across them, so to show they are not received in evidence, and I will receive 4 and 5, and let those be marked Defendants' Exhibits 1 and 1-A. The reporter may so mark them, and as so marked they will be received in evidence on behalf of the defendants.

(Said documents, so offered and received in evidence, were marked Defendants' Exhibits 1 and 1-A.)

The Court: Are there any further documents re evidence on behalf of the defendants?

Do you need me, or can I go home?

Mr. Walsh: I beg your pardon. I beg Your Honor's pardon, but there were some envelopes marked Defendants' Exhibit 4, and they were admitted as Government Exhibit 94.

Mr. Downing: That is in evidence.

The Court: I don't need that.

Are there any other documents re evidence?

Mr. Callaghan: None, Your Honor, so far as the defendant Gordon is concerned.

The Court: Is there any other evidence on behalf of the defendant Gordon?

Mr. Callaghan: The defendant Gordon rests.

The Court: As to the defendant MacLeod?

Mr. Walsh: The defendant MacLeod rests.

The Court: Both defendants rest.

Is there any rebuttal on behalf of the Government?

Whereupon, The Government, To Further Maintain The Issues In Its Behalf, Introduced The Following Further Evidence, In Rebuttal, To-Wit:

WILLIAM J. McCORMICK, called as a rebuttal witness on behalf of the Government, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. You are the same Mr. McCormick who previously was sworn and testified in this matter, is that right?

A. I am.

Q. Directing your attention to November 8, 1950, at that date you saw the defendant Gordon, is that right, Sir?

A. I did.

Q. At that time did you arrest the defendant Gordon?

A. I did not.

Q. Did you advise the defendant Gordon on that date as to his rights to have an attorney?

Mr. Callaghan: That is objected to as not being proper rebuttal.

By the Witness:

A. I did.

The Court: Overruled.

By Mr. Downing:

Q. Will you relate the conversation you had with the defendant Gordon with respect to his rights to have an attorney?

Mr. Callaghan: That is also objected to on the ground that it is not proper rebuttal. No question was asked of the defendant Gordon on direct or cross examination on that.

The Court: Overruled. He may answer.

By the Witness:

A. I told him he was entitled to an attorney, and we wanted to talk to him, and he said he was very glad to come to our office to be interviewed by us. Later, during 831 the interview, approximately 11:30, he told me he had an appointment with his attorney—that is in our building—at 11 o'clock on that day, and I asked him why he had not called him and told him he would be late.

Mr. Callaghan: I renew my objection. This obviously is not rebuttal evidence.

The Court: The objection is overruled. You may complete the conversation.

By The Witness:

A. (Continuing) And I told him that since he had an appointment with his attorney, he better keep the appointment, so he left our office at 11:40 in the morning.

By Mr. Downing:

Q. Did he mention the name of the attorney at that time and place?

A. He did.

Q. What was the attorney's name?

A. Mr. Callaghan.

Q. Now, directing your attention to Government Exhibit 91 in evidence, I believe you testified—

Mr. Callaghan: I object to him reviewing his testimony with him.

832 The Court: Sustained. State your question.

By Mr. Downing:

Q. On what date did you first see that exhibit?

A. November 29, 1950.

Q. And where were you at that time?

A. I was in the rear office in the store at 21 East Adams Street.

Q. And Mr. McHegan was present, as you previously testified, is that right, Sir?

A. He was.

Q. And the defendant Gordon was present, was he?

A. He was.

Q. Will you relate what, if any, conversation you had with the defendant Gordon concerning that exhibit here?

-Mr. Callaghan: That is objected to on the ground that he has already testified in the government's main case as to the entire conversation. This is a matter of repetition and not proper rebuttal.

The Court: The objection is overruled.

By The Witness:

A. I observed this piece of paper on the floor, and I picked it up, and I showed it to Gordon, and I said, "You told me that you have not used this paper, this type 833 of paper, or the name 'Liberal Loan Bank' since 1946.

How do you account for this?"

He said then that he recalled that they still did use this form as scratch pads, and that he further recalled that there were a couple of these pads on the front counter of the store that were in use as scratch pads.

By Mr. Downing:

Q. By "this paper," you are referring to—

Mr. Callaghan: I submit that this is exactly what the defendant Gordon said on his examination, and that is not proper rebuttal, and I move that it be stricken.

The Court: Denied.

By Mr. Downing:

Q. By "this exhibit," you are referring to Government Exhibit 91, is that right?

A. I am.

Q. I believe you testified concerning a conversation in—

Mr. Callaghan: I object to his reviewing the testimony of the witness.

The Court: Sustained again. State the conversation, if you had one.

834 By Mr. Downing:

Q. Did you have a conversation with the defendant Gordon on November 8, 1950, at the office of the Federal Bureau of Investigation?

A. I did.

Q. At that time did the defendant Gordon make this statement to you—

Mr. Callaghan: I object to him leading the witness.

The Court: Overruled. This is rebuttal.

Are you concerning yourself with something said on defense?

Mr. Downing: That's right.

The Court: You may proceed.

Mr. Callaghan: If Your Honor please, concerning this, I anticipate from the question something that Mr. McCormick said, the government said on their main case, did not happen. It is not a new matter injected into this case.

The Court: I can rule on it if I hear the question.

By Mr. Downing:

Q. Did Mr. Gordon explain that if he told of everyone who had stolen merchandise in the city of Chicago, it
835 would involve a great many people?

Mr. Callaghan: I object to it and renew my objection.

The Court: Sustained. That was stated on the government's case, and denied on the cross. It is repetition.

By Mr. Downing:

Q. Directing your attention to November 8, 1950, did you have a conversation with the defendant MacLeod?

A. I did.

Q. Where did you first see him on that date?

A. I first saw him at 215 East Erie Street.

The Court: What is this date again?

Mr. Downing: November 8th.

Mr. Walsh: I object again to this on the ground that it is mere repetition.

The Court: When I hear the question I will be able to rule on it, and not until then.

What is your question?

By Mr. Downing:

Q. At that place and time, did you show the defendant MacLeod, at 215 East Erie Street, any kind of photographs to the defendant MacLeod?

A. I did not.

836 Q. In your presence was any photograph illustrated to the defendant MacLeod at 215 East Erie on November 8, 1950?

A. No photograph was shown to him in my presence.

Q. I now show you Government Exhibits 95, 96, 97 and 98, marked for identification, and I ask you to look at those, and I ask you if you have seen them before?

A. I have.

Q. With respect to those—

Mr. Callaghan: Do you have any objection to me looking at those while he looks at them?

Mr. Downing: No, go right ahead.

By Mr. Downing:

Q. With respect to those exhibits, did you have those present at the time you had a conversation with the defendant MacLeod on November 8, 1950?

A. I did.

Q. Where did you have them with you at the time you had a conversation with the defendant MacLeod on November 8, 1950?

A. They were in the possession of Special Agent Higgs, who was with me at that time.

Q. And whereabouts was that at?

A. That was in the Bankers Building at Room 837 2,000, 105 West Adams Street.

Q. That is the office of the FBI, is that right?

A. That's right, Sir, one of the offices.

Q. Now, at that time and place, were those photographs, Government Exhibits 95 through 98, shown to the defendant MacLeod?

A. They were.

Q. And were they identified, that is, by the name of the person?

A. They were.

Q. Was the name of the person identified to the defendant MacLeod on that day?

A. They were.

Mr. Walsh: I object to this. He went over it on direct, and Mr. MacLeod had a different recollection of it, and so testified, and I think all he did is put in his case again on direct, and I object to it.

The Court: The objection is overruled.

By Mr. Downing:

Q. What was the name of the person you identified the photographs with, Government Exhibits 95, 96, 97 and 98, inclusive?

A. James Irwin Marshall.

838 Mr. Walsh: Kirwin?

The Witness: Irwin.

The Court: You will have an opportunity to cross examine.

Mr. Walsh: I am sorry.

By Mr. Downing:

Q. Will you relate the conversation you had with the defendant MacLeod at that time and place concerning those photographs?

A. Special Agent Higgs exhibited these photographs to Mr. MacLeod and asked him if he knew this man.

MacLeod said he did not.

Higgs then stated that his name was James Marshall, and that he was a friend of Al Swartz from Detroit, and MacLeod said that he still didn't recognize this man.

Q. Was that the substance of the conversation concerning those photographs?

A. Concerning these photographs, I believe it was.

Mr. Walsh: Now, if it please Your Honor, I will move to strike all of the conversation at 215 East Erie Street on the ground this man had been arrested for an offense apparently, and he should have been taken to the Commissioner and arraigned before he was taken to their office for interrogation prior thereto, and this is improper. Now, that it has all been disclosed in the record, I think it should be stricken.

The Court: Motion denied.

By Mr. Downing:

Q. On that date, when you had this conversation with the defendant MacLeod, did he at any time tell you that he didn't care to talk unless he had an attorney in his presence?

A. He did not.

Q. Did he refuse to answer any questions in your presence on November 8, 1950?

A. No, he answered every question I put to him, or Higgs did.

Mr. Downing: At this time, If Your Honor please, the Government would like to offer in evidence Government Exhibits 95 through 98, and they may cross examine.

You may cross examine, Mr. Callaghan.

By Mr. Callaghan:

Q. Mr. McCormick, are Exhibits 95 to 98, inclusive, the photographs we demanded yesterday and you said were in Detroit when we asked for them?

A. I think I told you—

Mr. Callaghan: Just a moment, please, now.

The Court: Let him answer.

Mr. Callaghan: Now, he may refer to his evidence, if he wishes to somewhere along the line, but I object to what he said he told anybody about this.

The Court: Do you want to withdraw the question?

Mr. Callaghan: I will withdraw the question and ask this question:

By Mr. Callaghan: *

Q. Are these pictures, Government Exhibits 95 to 98, for identification, the same photographs that you said yesterday or the day before, were in Detroit?

A. The record will show that I never said that.

Q. The jury will remember the evidence, I assume.

Mr. Downing: I object to the remarks of counsel.

841 The Court: The remarks may be stricken. Do you have any other question?

Mr. Callaghan: That is all.

The Court: Mr. Walsh.

Cross Examination

By Mr. Walsh:

Q. Mr. McCormick, did you make any reference to the Detroit office in connection with these photographs in your testimony?

A. I did.

Q. These photographs, let the record show, he is referring to Government Exhibits 95 to 98—

The Court: Correct. The record may so show.

By Mr. Walsh:

Q. As a matter of fact, didn't you tell us you believed the photographs had been returned to Detroit?

A. No, I did not. I said that the photographs were in our files, either in our files in Chicago or in Detroit.

Q. Now, I believe you testified on rebuttal here that you told Mr. MacLeod that this man was James Irwin Marshall?

A. That's right.

Q. That is the man whose picture is portrayed in
842 Government Exhibits 95, 96, 97 and 98?

A. That's right.

Q. Then he told you he didn't know him?

A. That is true.

Q. And you say he answered every question you asked him?

A. He gave me an answer to every question I put to him, yes.

Q. Did he tell you that he didn't know that any film in the garage was stolen?

A. He told me that there had been no film in the garage, that he would have known had there been.

Q. Did you ask him when he knew such film as you claimed was there, was stolen?

A. Would you repeat the question?

Q. Did you ask him whether such film as you claimed was there, was stolen?

A. At the conclusion of the interview I told him that the film we were inquiring about had been stolen. I did not tell him before that that it was stolen.

Q. Now, about this attorney business, did you go to 215 East Erie Street as a result of a telephone call from Mr. Higgs?

A. I went to 215 East Erie Street because of a 843 telephone call that I had with Assistant United States Attorney Downing.

Q. And not the result of any call from Mr. Higgs?

A. Indirectly, perhaps.

Q. But you had a call from Mr. Higgs?

A. I had a call from Mr. Higgs.

Q. And you talked to Mr. Downing?

A. That is correct.

Q. Then you went to 215 East Erie?

A. That's right.

Q. And while you were there, did MacLeod call an attorney?

A. He did not.

Q. Did he tell you he was going to call an attorney?

A. Special Agent Higgs told me that Mr. MacLeod had already called someone.

Q. Well, were you alarmed that he might have called an attorney?

A. No, had he asked me I would have permitted him to call, too.

Q. Were you aware of Agent Higgs' request to him not to call anyone?

A. I don't believe that any request like that was made.

844 Mr. Walsh: That is all.

The Court: Is there any redirect?

Mr. Downing: I have just one question, Your Honor.

Redirect Examination

By Mr. Downing:

Q. With respect to this conversation inquired about on cross examination, about the film in the garage, what all did Mr. MacLeod tell you about the film in the garage on that date, November 8, 1950?

A. I asked him if he were in the film business, and he said he was not.

I asked him if he had ever bought or sold any film, and he said he hadn't.

And I asked him if there was any film on the premises at 215-217 East Erie Street, and he said there was not, and I asked him if there was any film in the garage at 217 East Erie Street, in July, and he said there was not.

I asked him specifically if, on July 27, there had been any film in the garage at 217 East Erie Street, and he said there was not, and I asked him if there had been 845 would he have known it, and he said he would have.

I asked him if he loaded any film from the garage into a Michigan car, a car bearing a Michigan license, and he said he had not.

I asked him if he had loaded any film from the garage at 217 East Erie Street into any car, and he said he had not.

During the month of July, and more specifically on July 27th—

Q. Is that the extent of your conversation concerning the film on November 8, 1950?

A. Later on I informed him that the film had been stolen.

Q. But that was after all these questions and answers were given, as you testified, is that right?

A. That's right.

Mr. Downing: That is all.

The Court: Any recross?

Mr. Callaghan: None.

The Court: Mr. Walsh?

Recross Examination

By Mr. Walsh:

Q. You told him as a preface to all of those ques-

846 tions that the film was stolen, didn't you?

A. No, I did not.

Q. Didn't you characterize it as stolen film in your questions?

A. No, I did not.

Q. As a matter of fact, Mr. Brodtkin was trying to see him, wasn't he?

A. Not to my knowledge. He never called me.

Q. Mr. Brodtkin appeared as soon as you appeared at the Commissioner's office?

A. I wouldn't know. I didn't go to the Commissioner's office.

Q. But Mr. Brodtkin appeared that same day at the arraignment before Commissioner Walker?

Mr. Downing: I object to that.

By the Witness:

A. He may have.

The Court: The record will probably show it.

Mr. Walsh: The Commissioner's record does show it.

The Court: Very well.

Mr. Walsh: That is all.

Mr. Downing: That is all.

The Court: That is all. You may step down.

847 Objections, if any, to Government Exhibits 95 through 98?

Mr. Callaghan: I object specifically to Government Exhibits 95, 96 and 98 on the ground that proof here in this case is the only photograph shown to the defendant Gordon is the photograph identified as Government Exhibit 97. I have no objection to it.

The Court: Very well.

Mr. Walsh?

Mr. Walsh: Well, I will object on the ground there is no showing as to which of these photographs was shown to Mr. MacLeod. Other than that, I don't have any objection.

Mr. Downing: Your Honor, the record shows he stated he had shown all of them.

The Court: The objection is overruled, and Government Exhibits 95, 96, 97 and 98 are received in evidence.

(Said photographs, so offered and received in evidence, were marked, respectively, Government Exhibits 95, 96, 97 and 98.)

The Court: Any further rebuttal?

Mr. Walsh: I would like the jury instructed that
848 these photographs are not to be considered as the
photographs identified by other agents as one that they
showed.

The Court: The jury will recall the testimony, I assume.

849 The Court: Further rebuttal?

FRANCIS J. STEFANAK, called as a witness on behalf of the Government in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. State your name, please?

A. Francis J. Stefanak.

Q. What is your business or occupation, Mr. Stefanak?

A. I am a Special Agent with the Federal Bureau of Investigation.

Q. How long have you been so engaged?

A. Four years.

Q. In July of 1950, through November, 1950, at what office were you stationed?

A. The Chicago office.

Q. Now, I show you Government's exhibits 95, 96, 97, and 98, in evidence. I will ask you to look at those and ask you if you have seen those before?

A. I have. There are photographs of James Marshall.

Mr. Callaghan: I object to that.

The Court: Sustained as to what they are.

By Mr. Downing:

Q. Approximately when did you first see those photographs?
850

A. I think it was in August of last year.

Q. By that you mean August of 1950?

A. Yes.

Q. Directing your attention to the defendant, Kenneth Gordon, are you acquainted with Kenneth Gordon?

A. Yes, sir.

Q. Do you see him in the court room?

A. Yes.

Q. Will you point him out, please?

A. Yes.

Transcript of Proceedings

Mr. Downing: Let the record show the witness has identified the defendant Kenneth Gordon.

By Mr. Downing:

Q. On what date did you have occasion to talk to the defendant, Gordon?

A. On November 8, 1950.

Q. Where did you talk to him at that time?

A. In the Chicago office, Room 2000 Bankers Bldg.

Q. Is that here in Chicago, Illinois?

A. That is here in Chicago, Illinois.

Q. Who else was present on that day?

A. Special Agent William McCormick.

851 Q. Was the defendant Gordon present too?

A. Yes.

Q. At that time and place did you show the defendant Gordon photographs, Government's exhibits 95 through 98, inclusive?

A. I did.

Mr. Callaghan: Your Honor please, I submit this is part of the Government's main case. If this man is going to testify to this, your Honor, he should have been required to do it. It is not proper rebuttal.

The Court: Is this corroboration?

Mr. Downing: Mr. McCormick testified about showing them to MacLeod. This man is testifying about his showing them to Gordon.

The Court: What is the testimony of the defense as to Gordon?

Mr. Downing: Gordon said he only saw 97. He thinks it was 97, although he thinks it was a larger photograph. He said 95, 6 and 8 were not shown to him.

The Court: Yes. Objection overruled. You may proceed.

By Mr. Downing:

Q. With respect to each of those exhibits, 95, 96,
852 97, and 98, were they illustrated and shown to the defendant, Kenneth Gordon, on November 8, 1950?

A. Yes. I showed him these photographs on November 8th.

Q. Did you have a conversation with him at that time?

A. Yes.

Q. Will you relate that conversation?

A. He examined the photographs and said he did not

know this individual. Had never seen him before, and I said, "This is James Marshall from Detroit, Michigan. He is a friend of Al Swartz, the jeweler in Detroit, Michigan."

And Kenneth Gordon said, "I know Al Swartz. He is a jeweler in Detroit."

He said, "I have done some jewelry business with Al Swartz. I don't know this fellow at all. Never heard the name Marshall."

Q. ~~Is that~~ the extent of your conversation about the photographs, Government's exhibits 95, 96, 97, and 98, on that date?

A. Yes, sir.

Mr. Downing: You may cross examine.

Mr. Callaghan: No cross examination.

853 The Court: Do you have any questions?

Mr. Walsh: Yes.

Cross Examination

By Mr. Walsh:

Q. Have you been in the court room during the taking of evidence?

A. No, sir.

Mr. Walsh: That is all.

Mr. Downing: That is all.

The Court: Step down.

(Witness excused)

860 (The following proceedings were had in the presence and hearing of the jury:)

The Court: The Government may proceed with rebuttal.

JAMES IRVIN MARSHALL, called as a witness in rebuttal on behalf of the Government, having been heretofore previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. Will you state your name, please?

A. James I. Marshall.

861 Q. You are the same James I. Marshall who has been previously sworn and testified in this matter, is that right, sir?

A. That is right.

Q. Mr. Marshall, what was the first date that you met the defendant Gordon?

Mr. Callaghan: That is objected to, as not proper rebuttal.

Mr. Downing: It is a preliminary question, your Honor.

The Court: He testified to that on the Government's case in chief. Sustained.

By Mr. Downing:

Q. Directing your attention to July 20, 1950, were you at the Liberal Jeweler's at 21 East Adams?

Mr. Callaghan: Same objection.

The Court: Overruled. That was gone into, July 20, '50.

Mr. Downing: July 20th.

Mr. Callaghan: All of that has been testified to on the Government's main case, your Honor please.

The Court: Yes. So far as there was a variance in 862 the defense.

Mr. Callaghan: It is not proper rebuttal. It is not something that the defendants have brought as new evidence or additional evidence on the defense of this case.

The Court: Objection overruled.

Mr. Walsh: On behalf of the defendant MacLeod, I suggest that the direct testimony did not relate to Mr. MacLeod, and that the rebuttal has no bearing on him.

The Court: That is as to the 20th. That is right.

Mr. Downing: That is as to the jewelry store.

The Court: That is as to the jewelry store, and the instruction that you asked for at that time, as I mentioned, will be given. If the defendant MacLeod was not present, of course the evidence does not apply to him.

Proceed.

By Mr. Downing:

Q. On the first date that you met the defendant Gordon, were you in the back office, in any back office in that store with the defendant and Mr. Swartz for approximately 863 20 minutes?

A. No, sir.

Q. Have you ever been at any time in the back, in a back office at the business establishment of the defendant, Kenneth Gordon, with Mr. Swartz and the defendant Gordon for any amount of time of 20 minutes?

A. No.

Mr. Callaghan: The same objection.

The Court: The same ruling. The answer may stand. By Mr. Downing:

Q. Were you ever in the back office of Gordon's business establishment with Mr. Swartz when the defendant, Gordon, was in the back room sorting diamonds?

A. No, sir.

Mr. Callaghan: Your Honor, please, so that I need not be continually interrupting and in order not to prolong this trial unduly, may it be understood I object to each of the questions which will be asked along that same line?

The Court: Yes.

Mr. Callaghan: Without the necessity of my repeating the objection on each occasion?

864 The Court: Yes. I think that will promote the orderly handling of the case. Your objection in that regard may be noted.

Mr. Walsh: So far as the defendant MacLeod is concerned, we want to preserve our rights insofar as all this testimony is concerned on this day. MacLeod is not present, according to his testimony.

The Court: I have ruled on that already. I said I would give an instruction.

865 Q. Now, on the date that you first met the defendant Gordon in his jewelry store in Chicago, did Mr. Swartz ask Gordon about a diamond wrist watch, and did Mr. Swartz tell Mr. Gordon it was sort of high priced for him, and he was tied up in a film deal and would have the films sold by next week, and maybe he would be interested by then? Did that conversation ever take place in your presence?

A. Not that I know of.

Q. Did Mr. Swartz ask Mr. Gordon on the first date that you met Mr. Gordon in a back office in the jewelry store, in your presence, did Mr. Swartz ask Mr. Gordon, "Incidentally, do you know of a garage where I can put the film"?

A. No.

Q. Did Mr. Swartz tell Mr. Gordon on the first date that you met the defendant Gordon, did Mr. Swartz make this statement to Gordon: "I have a truck load full of film"?

A. No, not in my presence.

Q. Did Mr. Gordon tell Mr. Swartz at any time in your

presence to look in the newspaper and see if he could find a garage advertised in the Chicago Tribune?

A. No.

866 Q. In your presence at any time did Mr. Gordon tell Mr. Swartz that he had a garage behind his rooming house at 215 East Erie Street, and ask you what size truck you had?

A. No.

Q. Did you ever at any time describe to the defendant Gordon an old newspaper truck in which you had film?

A. No.

Q. And did you ever describe to the defendant Gordon any type of a truck at any time?

A. No.

Q. In your presence did the defendant Gordon ever call the defendant MacLeod and ask him the condition of the garage in the rear of the premises, and describe the truck which you are alleged to have told him about?

A. No.

Mr. Callaghan: If Your Honor please, I want to again make a more specific objection. This is not a proper way of presenting rebuttal evidence. He is asking each question and answer in connection with the whole lawsuit, re-trying the whole case.

The Court: How far are you going?

Mr. Downing: Just a small amount. I think it will take about ten minutes.

867 The Court: I don't want you to go over every bit of the witness' testimony.

Mr. Downing: Oh no.

The Court: Can't you put it together, combine some of it, if you can?

Mr. Callaghan: Is my objection overruled?

The Court: Yes. Let the record note the objection is overruled.

By Mr. Downing:

Q. Did Mr. Gordon ever tell Mr. Swartz in your presence that he had space in the garage and that he would charge him \$20 for the garage?

A. No, sir.

Q. Did Mr. Swartz ever tell Mr. Gordon in your presence that he would pay \$20?

Mr. Callaghan: I object to that last question as not being proper impeachment.

The Court: Read the question.

(Question read.)

The Court: Overruled.

By Mr. Downing:

Q. The second time on which you came to Chicago, at which you went into the store on July 27th, you went 868 in with the defendant Gordon—

Mr. Callaghan: Wait a minute. I object to him stating that this witness did certain things, stating that that is the fact.

The Court: Sustained. It may be stricken.

By Mr. Downing:

Q. Directing your attention to July 27, 1950, were you in the Jewelry store with the defendant Gordon on that date?

A. Yes, sir.

Q. Did you have occasion that day to go into the back room with the defendant Gordon and Mr. Swartz?

A. No, sir.

Q. At that time in your presence did Mr. Swartz tell Gordon that he wanted to take the truck and told him that he didn't get the key the first time he put the truck into the garage, the week before?

A. No, sir.

Q. Now, directing your attention to July 27, at 215 East Erie Street, on that day did you see the defendant MacLeod at that location?

A. Yes, sir.

Mr. Walsh: What date is that?

Mr. Downing: July 27th.

869 By the Witness:

A. Yes, I did.

Mr. Callaghan: There is no dispute about that. That is not proper rebuttal.

The Court: Overruled.

By Mr. Downing:

Q. Did you at any time say to the defendant MacLeod at 215 East Erie Street, "Why don't you drive the truck out, and I will back the car in"?

Mr. Walsh: Oh, now, I object to this, Your Honor. This was a conversation testified to as being one that was in effect.

The Court: In what?

Mr. Walsh: As being a conversation that was described as in effect.

The Court: You mean "substantially"?

Mr. Walsh: Described to Your Honor as being substantially.

The Court: Yes.

Mr. Walsh: And that is not the question the prosecutor has asked.

The Court: He is entitled to paraphrase it, "substantially, or."

Mr. Walsh: It is a circumstantial situation, and I think the prosecutor should be required to ask whether that question was asked in substance, in effect, or nearly.

The Court: Well, in so far as your objection goes to the phrasing of the question, it is sustained.

You must state "in substance" or "in effect."

Mr. Downing: The remainder of the objection is overruled.

By Mr. Downing:

Q. In substance or effect, did the defendant MacLeod at 215 East Erie Street say to you, in substance or effect, "Why don't you drive the truck out, and I will back the car in"?

Mr. Walsh: I object to that as not being proper impeachment, and nothing has been testified to by any witness here—

The Court: Overruled.

Mr. Walsh: The defendant MacLeod did not testify that he stated that to this man, and that is the question.

The Court: The objection is overruled. He may answer.

By Mr. Downing:

Q. What is your answer?

A. Mr. MacLeod said he was going to drive the car out, and for me to drive my car—

Mr. Callaghan: I object to that. The question is, "Did you say." I object to the answer of the witness.

The Court: Yes, the answer may be stricken.

Answer that yes or no. Did he or did he not say that in substance?

The Witness: For me to drive the truck?

Mr. Downing: Yes. Did Mr. MacLeod say to you,

"Why don't you drive the truck out, and I will back the car in"?

Mr. Walsh: I object to that as not being proper evidence in the case, proper redirect.

The Court: You will have to talk one at a time. Now, you, Mr. Walsh.

Mr. Walsh: We were talking about my client, so I think I should talk.

The Court: I am listening to you.

Mr. Walsh: I say to Your Honor this: That that question, there is no evidence that such a statement was ever made by Mr. MacLeod in this record, and that the prosecutor is misquoting the evidence. I will leave that to you and the jury.

Mr. Callaghan: Will Your Honor examine that page of the record? It can only be admissible as impeachment, if it is important at all.

Mr. Downing: Commencing with line 11, Your Honor.

Mr. Walsh: I object to consulting the record, unless the jury is to look at it.

Mr. Downing: If Your Honor please, defendant's counsel suggested that.

The Court: That objection is overruled.

Ask him whether or not MacLeod said this. If you take that quote out of line 11, the objection is sustained.

By Mr. Downing:

Q. Did you say to Mr. MacLeod at any time—

The Court: "In substance."

By Mr. Downing:

Q. (Continuing)—in substance or effect, "Why don't you drive the truck out and I will back the car in"?

Mr. Walsh: I object to this as leading and suggestive, and in view of the whole record that has transpired.

The Court: Overruled.

By Mr. Downing:

Q. Did you in substance or effect say to the defendant MacLeod at 215 East Erie Street, "Why don't you drive the truck out and I will back the car in"?

A. I didn't say that. Mr. MacLeod said that.

Q. What is your recollection as to what Mr. MacLeod said about that matter?

A. Mr. MacLeod said for me to drive my car in.

Mr. Callaghan: I object to asking that question. It is part of the government's main case, and not proper rebuttal.

The Court: Overruled.

By Mr. Downing:

Q. What did Mr. MacLeod say to you at that time?

A. He told me to drive my car inside the garage.

Q. Now, at 215 East Erie Street, did Mr. Swartz say in your presence to the defendant MacLeod that if it was all right to take the key that was still hanging in the lock on the garage door?

A. No, sir.

Mr. Walsh: Well, I object to that as not having 874 been the testimony of Mr. MacLeod, and not proper impeachment.

The Court: Overruled.

Mr. Walsh: The defendant MacLeod did not testify that he made such a statement in the presence of Mr. Marshall.

The Court: Proceed. I have ruled on it. I have overruled the objection.

By Mr. Downing:

Q. Directing your attention to Government Exhibit 83 in evidence, did you on July 27 show the note that is contained therein to the defendant MacLeod?

A. Yes, sir.

Q. Where were you at that time?

A. I rang the bell at 215 East Erie.

Mr. Walsh: I didn't hear the answer.

The Witness: I rang the bell at 215 East Erie.

Mr. Downing: Would you repeat the previous question?

The Court: Ask another question.

By Mr. Downing:

Q. Was the defendant MacLeod present at that time?

Mr. Walsh: I object to that and I ask now that I 875 be told where he was which was the question.

By The Witness:

A. 215 East Erie.

The Court: The objection is overruled. He may answer the question.

Mr. Walsh: Your Honor, the point here is this: He has now asked him whether he showed him a card at a point. "Where were you?" was his question, and you

showed him this card, and we all heard the testimony that both of these men—they agree they were at 215 East Erie. At what point at 215 East Erie were we; that is my inquiry.

The Court: Will you proceed with the examination? I overruled it.

Mr. Walsh: I object to the question and answer.

By Mr. Downing:

Q. At the time you were shown the defendant MacLeod at 215 East Erie, whereabouts were you?

A. I was on the inside of the lobby. I rang the bell.

Q. Was that in front or back of the building?

876 A. In the front of the building.

Q. Directing your attention to July 27th, at 215 East Erie Street, did you ask the defendant MacLeod if you could take the key that was still in the lock?

Mr. Walsh: I object to this. No one has testified to that. It is not impeachment.

Mr. Callaghan: May I respectfully submit this, if Your Honor please?

The Court: Wait until he finishes.

Mr. Walsh: This is an effort to show that somebody is lying, and it is not based on the record.

Mr. Callaghan: Counsel is now reading and asking questions from matters he developed on cross examination, and I submit, if Your Honor please, that it is not proper rebuttal.

The Court: You asked him whether or not he asked MacLeod if he could leave the key?

Mr. Downing: No, if he could take the key that was still in the lock.

The Witness: What key?

Mr. Callaghan: It is not in rebuttal of any evidence presented by the government.

The Court: The objection is sustained.

877 By Mr. Downing:

Q. Did you ever obtain any key at 215 East Erie Street?

Mr. Walsh: I object to that as not proper rebuttal, on the same basis.

The Court: Overruled. He may answer.

By The Witness:

A. No, sir.

Mr. Walsh: Your Honor, it was not stated by any witness on the defense that this man obtained the key.

The Court: The answer may stand.

Mr. Walsh: At 215 East Erie.

By Mr. Downing:

Q. Now, at the time you were at 215 East Erie Street in Chicago, did you see any figurines in the garage?

A. Yes, sir.

Mr. Walsh: Well, I object to that. That was not denied on either direct or cross examination.

The Court: The objection is sustained, and the answer may be stricken.

Mr. Walsh: I move to strike the question and answer.

The Court: I have already done it. Sit down.

Ask your next question.

878 By Mr. Downing:

Q. Now, directing your attention to July 22, 1950, were you present at a conversation with the defendant Gordon?

A. Yes, sir.

Q. Where was that conversation?

A. It was two places.

Q. Where did you first have a conversation on the 22nd of July?

Mr. Callaghan: I object. I submit, if Your Honor please, that this is not proper rebuttal, that there is no evidence offered by the defendant Gordon as to any conversations on July 22d of 1950. The evidence so far as the defendant Gordon is concerned was that on July 22, 1950 he wasn't even present. He is asking now for a conversation.

The Court: And on that ground, I overrule your objection.

By Mr. Downing:

Q. Where did you first have a conversation with the defendant Gordon on that date?

A. On Division, near Lake Shore Drive, or Michigan—I am not sure which.

879 Q. That was here in Chicago?

A. Here in Chicago?

Q. And who else was present?

A. Mr. Swartz and myself.

Q. Now, will you relate the conversation in substance, as best you can recall?

Mr. Callaghan: That is objected to as not being proper rebuttal, there having been no conversations in evidence.

The Court: Sustained. That was related in the Government's case in chief.

Mr. Downing: Not this part of it; this phase was not.

The Court: On the 22d at Lake Shore Drive?

Mr. Walsh: If he intends to rely upon it, I submit it should have been part of the case in chief.

Mr. Downing: There was no conversation on the 22d. He testified he met him there, that's right, but it is my recollection that there was no conversation testified about.

Mr. Callaghan: By either side, and I submit therefore it is not proper rebuttal.

The Court: Well, there was no conversation testified to, according to my notes on the case in chief.

The objection is overruled. He may answer.

By Mr. Downing:

Q. Will you relate the conversation?

The Court: First, set the time, other than the date.

By Mr. Downing:

Q. Approximately what time was this conversation, the first conversation?

A. About 4:30, 4:20 or 4 o'clock.

Q. That was in the afternoon, was it?

Mr. Walsh: If it please Your Honor, this objection made by Mr. Callaghan will not apply to both defendants, and I make it again on behalf of MacLeod. Apparently it is not in his presence.

The Court: Very well. MacLeod isn't there, so it doesn't apply against MacLeod.

Mr. Callaghan: Nor does it apply even against the defendant Gordon, as I understand your previous ruling. There is no charge in the indictment that any offense occurred on July 22d.

881 The Court: I will instruct the jury at the right time on that.

By Mr. Downing:

Q. That was between 4 and 4:30?

A. Yes.

Q. That was in the afternoon, was it?

A. Yes.

Q. Now, will you relate the conversation as best you can recall?

A. Mr. Swartz said something to Gordon about how come he couldn't get in touch with him, we had gotten in Chicago around 12 or 12:30, and he hadn't been able to contact him.

The Court: - I cannot hear you.

By The Witness:

A. (Continuing) Mr. Swartz had not been able to contact Mr. Gordon.

Mr. Callaghan: I move that be stricken.

The Court: What did he say?

By Mr. Downing:

Q. What did Mr. Swartz say, what did he tell Mr. Gordon?

A. Mr. Swartz said we had been here, and had been calling and called his house around three or four times.

882 Mr. Walsh: I object to that.

The Court: Overruled.

By Mr. Downing:

Q. This is what Swartz told Gordon?

A. That's right.

Q. What else was said at that time?

A. Gordon said he had been out on his boat, sailing or fishing or something.

Q. Was there any other part of the conversation that you can recall at that time?

A. And Gordon told us to drive down the alley, and we followed Mr. Gordon's car.

Q. All right. Now, did you ever at any time bring a truck load of film from Detroit to Chicago?

A. No, sir.

Mr. Walsh: I object to that.

The Court: Overruled.

Mr. Walsh: It is not suggested by the evidence.

By Mr. Downing:

Q. To your knowledge did Mr. Swartz ever bring a truck load of film from Detroit to Chicago?

Mr. Walsh: I object to that as not being any part of the evidence, or any proper impeachment, or proper rebuttal.

Mr. Callaghan: I submit that that calls for a conclusion.

The Court: Both objections are overruled.

By The Witness:

A. No, sir.

By Mr. Downing:

Q. Did you ever have a truck load of film in your care, control, custody or possession here in Chicago?

884 Mr. Callaghan: That is objected to as calling for a conclusion of the witness. That is one of the ultimate questions of fact to be determined by this jury.

The Court: Overruled. He may answer.

By The Witness:

A. At no time.

By Mr. Downing:

Q. At any place, did you ever have a truck load of film under your care, control, custody and possession?

Mr. Callaghan: That is objected to as not being proper rebuttal.

Mr. Walsh: That is objected to. It invades the province of the jury.

The Court: Overruled. He may answer.

By The Witness:

A. No, sir.

By Mr. Downing:

Q. To your knowledge, did the defendant Swartz ever have a truck load of film in his control, custody, and possession in Chicago?

885 Mr. Walsh: Obviously this question asks this witness to decide the whole case.

The Court: Yes, sustained.

By Mr. Downing:

Q. Is the only film that you have had in your possession in Chicago, the film about which you have testified previously?

Mr. Walsh: That is objected to.

Mr. Callaghan: That is objected to as not being proper rebuttal and calling for a conclusion.

The Court: Overruled. He may answer.

By The Witness:

A. Will you repeat the question?

By Mr. Downing:

Q. Is the only film you had in your possession here in Chicago the film about which you testified you had on July 20, 22, and 27?

A. No, sir.

Mr. Walsh: I object to that.

The Witness: I carry film in my store.

Mr. Walsh: May I have a ruling on that objection, your Honor?

By Mr. Downing:

Q. Here in Chicago, have you had any other film 886 other than the one you testified about?

A. No, sir.

Mr. Downing: You may cross examine.

Cross Examination

By Mr. Callaghan:

Q. Did someone tell you that Mr. Gordon had testified here that on July 22, he had been out on his boat all day?

A. No, sir.

Q. Did you discuss your evidence with anybody this morning before you took the witness stand?

A. Yes, sir.

Q. With whom?

A. With Mr. Downing.

Q. And who else?

A. Mr. McCormick?

Q. And who else?

A. I think it might have been Mr. Reddy.

Q. Who?

A. Mr. Reddy.

Q. Anybody else?

A. I didn't discuss it with Mr. Reddy, but Reddy was present.

887 Q. Anybody else?

A. That is the only one I remember.

Q. Did Mr. Gordon say he was sailing?

A. He said he had been out on his boat. I don't know whether he was sailing or fishing.

Q. Well, which did he say, sailing or fishing?

A. He said out on his boat.

Q. Did he mention sailing or fishing?

A. No, sir.

Q. You thought about that when you said "out on his boat, sailing or fishing", is that right?

A. Yes, sir.

Q. Gordon didn't say anything like that, did he?

A. He said he had been out on his boat.

Q. And that is all?

A. That's right.

Q. How long had you spent with Downing this morning?

A. 10 or 15 minutes.

Q. Had your case been disposed of in Detroit since you left here?

A. No, sir.

Q. Have you been back to Detroit since you first testified?

888 Mr. Downing: Objection. That is immaterial:

The Witness: For two hours.

The Court: Sustained.

The answer may be stricken. That last answer may be stricken.

By Mr. Callaghan:

Q. Have you consulted with the United States Attorney in Detroit since you left here?

Mr. Downing: Objection, your Honor.

The Witness: No.

The Court: Overruled. He may answer:

889 Q. Did you consult with the agents of the Federal Bureau of Investigation since you last testified?

A. One of them, I talked with one of them.

Q. Mr.—

A. Mr. Phillips.

Q. Mr. Phillips from Detroit?

A. Yes, sir.

Q. Where did you talk to him?

A. In the U. S. Marshal's office in Detroit.

Q. In Detroit, Michigan?

A. Yes.

Q. That is since you have testified in this case?

A. Yes.

Q. Who else was present when you talked to Mr. Phillips in the Federal Bureau of Investigation?

A. Some marshals.

Q. United States Marshal?

A. Yes, sir.

Q. Who else?

A. That is all.

Mr. Callaghan: That is all.

The Court: Mr. Walsh?

Mr. Walsh: One question.

Cross Examination

By Mr. Walsh:

Q. You are a convicted felon, are you not?

Mr. Downing: I object, your Honor. It is not proper rebuttal.

The Court: Sustained.

By The Witness:

A. No, sir.

Mr. Walsh: I suggest this is an examination of his character.

The Court: I have sustained the objection, Mr. Walsh.

By Mr. Walsh:

Q. You have plead guilty to a felony?

Mr. Downing: Your Honor, I object. That is not proper cross examination.

Mr. Walsh: This goes to his character. He is a rebuttal witness.

Mr. Downing: It was not gone into on direct examination.

The Court: He may answer.

By The Witness:

A. What?

By Mr. Walsh:

Q. You have pleaded guilty to a felony under the 891 laws of the United States, have you not?

A. Yes, sir.

Q. You are unsentenced for the felony, is that right?

A. That is right.

Mr. Walsh: That is all.

The Court: Mr. Downing, any other questions on redirect?

Redirect Examination

By Mr. Downing:

Q. In connection with the question Mr. Callaghan asked you about discussing your testimony, will you explain the discussion that you and I had about any testimony this morning?

Mr. Callaghan: I object to discussing on explanation.

Mr. Walsh: I object to explanations—

The Court: Overruled.

Mr. Walsh: Either his conclusion or as far as his explanation is concerned, I suggest it is a matter of argument in support of the objection.

The Court: The objection is overruled.

892 By Mr. Downing:

Q. Will you explain that?

A. Mr. Downing, you asked me whether these questions were true.

Mr. Walsh: I object to that, your Honor. I move the answer be stricken.

The Court: The motion is denied.

Mr. Callaghan: I want to enter an objection.

By Mr. Downing:

Q. At the same time did you make—

Mr. Callaghan: I want to make an objection.

Mr. Downing: Pardon me.

Mr. Callaghan: I submit, if your Honor please, that he was only asked whether or not he had a discussion. I further respectfully submit he is not entitled to go into that discussion and that these defendants are not bound by conversations had between the United States attorney and this witness out of their presence; and he be not permitted to go into detail on those discussions to say what was said and by whom at those discussions.

The Court: I will not permit him to go into the detail of it but in a general way he can tell us what was said.

By Mr. Downing:

Q. In general, did you give the same answers this morning to me that you have given here in the Court?

A. The same.

Mr. Walsh: I object to this.

The Court: Overruled.

Mr. Walsh: It is obviously calling for his conclusion.

The Court: Overruled.

Mr. Downing: That is all.

The Court: Any recross?

Mr. Callaghan: None.

The Court: Mr. Walsh?

Mr. Walsh: No more.

The Court: That is all. You may step down.

(Witness excused)

The Court: Call your next witness.

Mr. Downing: The Government rests.

The Court: The Government rests.

(The Government rested its case).

The Court: The jury will step out for a few moments.

Mr. Callaghan: The record ought to show that we
894 rest before they step out.

The Court: You did before.

(Thereupon the jury was excused and the following additional proceedings were had in the court room out of the presence and hearing of the jury:)

The Court: Motions?

Mr. Callaghan: Yes, your Honor. The defendants now at the conclusion of all of the evidence renew the motion that was heretofore made at the conclusion of this case for the United States, that the court enter a judgment of acquittal.

That motion is made as to each count of the indictment separately and severally. We urge in support of those motions the same grounds that we urged at the conclusion of the evidence for the United States and the additional ground, of course the evidence now having been heard and presented by the defense, that there is no sufficient evidence upon which this case may be presented to the jury.

The Court: It will be unnecessary to argue it. You
895 join in the same motion?

Mr. Walsh: On behalf of MacLeod I join in the motion.

The Court: The motion on behalf of both defendants is taken under advisement pursuant to the rules of Criminal Procedure, until after the return of the jury. If the jury's verdict is unsatisfactory to the defendants, you may join your argument in a motion for a new trial, together with your argument in support of this motion at a time to be set.

Pursuant to the rules of Criminal Procedure counsel will now be advised as to the court's ruling on the proffered instructions.

As to all instructions offered both by the Government and by the defendants; Gordon and MacLeod, and when I indicate that an instruction will be given in substance, I mean the principle of the instruction will be given. It may be given in a slightly different language than is contained in the proffered instruction. Likewise, when I indicate that the instructions will be given I intend to eliminate as much as possible of the repetition that occurs in some
896 or both the Government and the defendant Gordon's instructions. There are two or three instructions on

the same subject. I may use a part of each and give one instruction on the subject. If you will bear those two things in mind I will rule on the instructions as proffered.

Government's instructions 1 through 11 will be given in substance.

The defendant Gordon's instructions 1 through 18 will all be given in substance, with the exception of No. 14, which starts—I do not know if you can find it.

Mr. Downing: I cannot find the numbers.

The Court: They are not numbered. Well, count to the 14th sheet of paper.

Mr. Downing: All right.

The Court: It starts with "You are hereby instructed that if you find from the evidence that any witness for the prosecution has been promised immunity or reward and has received immunity—" That instruction is refused.

The two preceding instructions 12 to 13, will be given in substance. And go to the question of careful scrutiny 897 of the testimony of the person whose testimony incriminates himself as well as others, this will be given in substance and 14, which refers specifically to a promise of immunity or reward or receipt of immunity and will be refused.

Mr. Walsh: May I say, your Honor—

The Court: Your chance to object will be after the charges given and before the jury retires. The rule now requires me to instruct you how I am going to rule on your proffered instructions.

Now, on 18, submitted by Gordon, the first part of 18 will be given. I am not going to refer to the term wholesale, rather than retail value and to that extent the proffered instruction 18 is refused. I think the best instruction on value is a combination of the one offered by the defendant, MacLeod, and the one offered by the Government, which embraces also what is suggested in this offered by Gordon and such an instruction will be given, including the language of the statute on market value and the reference to what is market value contained in one of the Government's instructions. So that Gordon's instruction 18 so far as it refers to wholesale rather than retail will be refused. As to the rest of it, it will be given substance.

All of the instructions proffered by the defendant MacLeod, 1 to 6, will be given in substance.

Now, there were 2 hours per side allowed for argument. Are you ready to proceed? We will take a short recess.

Mr. Walsh: Mr. Callaghan has just called my attention to the fact that I have neglected to present to your Honor an instruction which I prepared last night.

The Court: I asked you when you came in this morning.

Mr. Walsh: I am sorry about it.

899 The Court: Have you it here?

Mr. Walsh: I do not have it here. It is to this effect and I think it is important, that the jury should not consider against any person the fact that he has refused to answer questions while in custody.

Mr. Callaghan: That is an approved instruction.

The Court: I cannot properly rule on it until you submit something in a specific language. If you get something in here this afternoon before the case goes to the jury, during the recess, I will tell you how I will rule on the instruction.

Mr. Walsh: Thank you.

The Court: In that general language I couldn't tell you, but I will rule on it if you will write it out and bring it in. I will give you a ruling. Since you did not bring it in, I will hear you at 2 o'clock.

937 Before Judge Campbell and a Jury,

Wednesday, June 6, 1951,

2:00 o'clock, p.m.

Court met pursuant to recess.

Present:

Honorable Otto Kerner, Jr.,

U. S. District Attorney,

By: Robert J. Downing,

On behalf of Government;

Assistant S. U. Attorney,

Mr. George F. Callaghan,

On behalf of Defendant Gordon;

Mr. Maurice J. Walsh,

On behalf of Defendant MacLeod.

938 (The following proceedings were had in the court room out of the hearing and presence of the jury:)

The Court: I assume you are referring to this last instruction you have just handed up?

Mr. Walsh: That is right, your Honor.

The Court: On behalf of the defendant—

Mr. Walsh: MacLeod.

The Court: The instruction will be given in substance.

Mr. Callaghan: If your Honor please, it is not our fault the jury came in. We asked that they be held. I guess it was not understood.

Just prior to the beginning of this trial and since 939 this trial has begun the defendants have on successive occasions moved for a mistrial because of various articles and things that appeared in newspapers, and an article appeared this morning and another one just the other day. Other articles have appeared since this motion for the mistrial was made. I would like now to renew that motion for a mistrial because of that. According to what your Honor has said previously, your Honor indicated you would grant leave to file these documents at some later date. I thought we ought to do it before the arguments were concluded. I would like to file it with the Clerk.

The Court: Surely, you may file the same.

Mr. Walsh: I have in addition to that a transcript from the Station W-I-N-D, which is not under oath or anything other than I stated to the Court I heard it. It is on that station.

The Court: You heard it yourself.

Mr. Walsh: Yes.

The Court: Does that represent what you heard?

Mr. Walsh: Yes.

The Court: Leave to file, in support of the mo- 940 tions heretofore made which have been denied.

Are we ready for the jury now?

Mr. Walsh: Yes, sir.

The Court: Bring in the jury.

(The following proceedings were had in the court room in the presence and hearing of the jury:)

The Court: You will follow Mr. Walsh then?

Mr. Callaghan: Yes, your Honor.

1023 The Clerk: 50 CR 641, United States vs. Kenneth C. Gordon and Kenneth J. MacLeod, case on trial.

The Court: Bring in the jury.

(Proceedings resumed in the presence and hearing of the jury)

The Court: It now becomes the duty of the Court to

instruct you in the law in the case wherein you have finished hearing the evidence and the arguments of counsel.

You will recall that at the very outset of this trial, I admonished all of you as to the nature of your oath, and against discussing the case with anyone or among yourselves and also against arriving at any conclusion on the case until you had heard all of the evidence on both sides, the arguments of counsel, instructions of the Court, and it is that part of the case that we are now coming to, the instructions of the Court.

I also admonished you at that time that you were not to be influenced in any way by anything that you might have read or might read in the newspapers or hear on the radio, or have communicated to you by way of television or any other means of communication; that you should be guided entirely in arriving at your decision in this case on the evidence as you heard it from the witness stand and the exhibits that are received in evidence, and on the law as I give it to you in these instructions:

I know you have all followed my admonition in this regard, and that you have heard the evidence with an open mind and that you have not carried on any of these discussions and, therefore, we will proceed at this time to instruct you as to the law, following which you will commence your deliberations to arrive at your verdict.

Now, these instructions on the law are intended to be a connected and consistent whole body of instructions. No one instruction can be taken away from other instructions and considered by itself unless it is of that character which requires it to be so considered. These instructions are a connected and continuous whole and they must be considered each in connection with the others, and not picked apart or considered piecemeal or by sentences, phrases, or paragraphs.

This case is one brought by an indictment returned 1025 by the Grand Jury of this District on December 1, 1950, in which the Grand Jury in four Counts charges Kenneth C. Gordon, who is seated at counsel table, Kenneth J. MacLeod, who is also seated at counsel table, and Albert Swartz, with certain offenses against the United States. As you have heard, the death of Albert Swartz has been suggested to the Court, and accordingly he has been dismissed from the indictment, so that as far as you

are concerned, the indictment charges at this time just Kenneth Gordon and Kenneth MacLeod.

The first Count of the indictment charges that on July 20, 1950, those defendants did unlawfully, wilfully and knowingly have in their possession, certain goods and chattels, to-wit: 11 cartons of 116 Kodak film; 7 cartons of 8 millimeter Kodachrome roll film; 1 carton of 8 millimeter Kodachrome magazine film; and 5 cartons of 16 millimeter Kodachrome movie film, which said goods had been theretofore unlawfully taken and carried away from a motor vehicle of the Interstate Motor Freight System, a Corporation, common carrier, on or about July 10, 1950, at Chicago, while those goods were moving as part of an interstate shipment of freight from Rochester, New York, to Chicago, Illinois, all of which goods were then in the control, custody and possession of the Interstate Motor Freight System, the common carrier.

The indictment further charges that the defendants at that time, that they had in their possession these goods in the Northern District of Illinois, which is our district here, then and there well knew that the same had been stolen. It charges a violation of Sec. 659 of Title 18 of the U. S. Code.

Get me the Code. It is the blue book over there. (indicating). The second Count of the indictment charges that the same defendants on or about July 20, did unlawfully, wilfully and knowingly transport and cause to be transported in interstate commerce from the City of Chicago in the State of Illinois to the City of Detroit in the State of Michigan, certain of the merchandise theretofore stolen—that is, the merchandise described in the first Count of the indictment which I have just summarized for you, which is incorporated by reference into Count 2 of the indictment—and which merchandise was of the value of more than \$5000, and the defendants then and there knowing the same to have been stolen, at the time that the merchandise was transported in interstate commerce as stated, in violation of Sec. 2314 of Title 18 of the U. S. Code.

1027 Count 3 of the indictment again charges a violation of Sec. 659 of Title 18, and charges that the same defendants on July 27—you will recall the first two counts refer to July 20, and the third and fourth counts refer to July 27. We are now concerned with the third.

It charges that on July 27, at Chicago, in this district, the defendants unlawfully, wilfully and knowingly had in their possession certain goods to-wit: 30 cartons of 8 millimeter Kodachrome roll film, which goods had been unlawfully stolen and taken and carried away from a certain motor vehicle of the Interstate Motor Freight System on July 10, 1950, at Chicago, while the goods were moving as part of an interstate shipment of freight from Rochester, New York, to Chicago, Illinois, in the possession of the Interstate Motor Freight System.

Count 4 charges the same defendants with having unlawfully transported in interstate commerce the merchandise described in Count 3, in that they are charged with having unlawfully, wilfully and knowingly transported and caused to be transported that merchandise described in Count 3, from the City of Chicago to the City of Detroit, one 1028 in Illinois and the other in Michigan, on July 27, 1950, and at that time that the merchandise was of the value of more than \$5000, and that the defendants at the time knew it had been stolen, in violation of Sec. 2314, of Title 18.

You will note that Counts 1 and 3 charge violation of Sec. 659 of the Code; Counts 2 and 4 charge a violation of Sec. 2314 of the Code, and I will now read those two sections, insofar as you are concerned with them.

Sec. 659 of Title 18, which is the Criminal Code of the United States, reads, insofar as you are concerned with it, as follows:

"Whoever embezzles, steals, or unlawfully takes, carries away, or conceals, or by fraud or deception obtains from any motor truck, or other vehicle, or from any station, station house, platform or depot with intent to convert to his own use any goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment of freight or express; or

1029 "Whoever buys or receives or has in his possession any such goods or chattels, knowing the same to have been embezzled or stolen, shall be punished in accordance with the terms of the Statute."

Sec. 2314 of the same Code, insofar as you are concerned with it, reads as follows:

"Whoever transports in interstate or foreign commerce any goods, wares, merchandise, of the value of \$5000 or more, knowing the same to have been stolen, converted or taken by fraud, shall be punished in ac-

MICRO

TRADE

2,307

CARD
MARK **®**

MATTHEW BENDER & COMPANY
MB

53

cordance with the provisions of the Statute."

So much for the indictment and the two sections of the Statute which the indictment charges to have been violated by these two defendants.

I am permitting the jury to take with it to the jury room the indictment in this case. I do so, however, with the caution and admonition that the indictment is not to be considered by the jury as any evidence against either defendant. The indictment is simply the formal charge made by the Government and must be considered by the jury in that light, and in no other light. In other words, the indictment is being given you for the purpose of informing you more at length as to the precise charges made.

1030 Now, you will note as I observed earlier that Counts

1 and 3 are similar except for different dates, and Counts 2 and 4 are similar, except for different dates.

Now, before you can find either defendant guilty on Counts 1 and 3 of the indictment the Government must prove, from all of the evidence and beyond a reasonable doubt, all of these 4 things:

First, that the goods described in that Count were stolen as charged;

Second, that at the time they were stolen, they were moving as or were part of, or constituted an interstate shipment of freight;

Third, that the goods or some of them came into the possession of such defendants; and

Fourth, that at the time they came into the possession of such defendant, he knew that they were stolen goods.

If the Government proves all four of these propositions beyond a reasonable doubt as to either or both of the defendants on Counts 1 and 3, then such defendant or defendants can be found guilty by you on such count; otherwise, they should be found not guilty on such count.

1031 The word "possession" as used in the Statute, applicable to Counts 1 and 3, may mean actual, manual, or personal possession, or it may also mean constructive possession, that is, where the goods are shown to have been under the control of the person charged, although they were in the actual physical possession of another.

The essence of the crime charged in Counts 1 and 3 of the indictment, that is, the charge of possessing goods stolen from interstate shipment, is guilty knowledge on the

part of the accused that the goods were stolen. It is not a crime to possess stolen property. The crime consists in possessing it knowing it to have been stolen, and you cannot find either defendant guilty under Counts 1 and 3 of this indictment unless you believe beyond a reasonable doubt that such defendant knew the goods were stolen, but it is not necessary to warrant a conviction under either of these Counts that the defendant knew the goods were stolen from an interstate shipment. They must indeed have been stolen from an interstate shipment of freight, but it is sufficient guilty knowledge if he knows they actually were stolen.

Possession of property recently stolen, if unexplained, is a circumstance tending to show guilty knowledge 1032 on the part of the accused that the goods were stolen, yet if the jury believes from the evidence that such defendant came honestly into possession of the property, or that possession by the accused is unconnected with any suspicious circumstances of guilt, this would be a satisfactory account of his possession, and would remove every presumption of guilt growing out of it.

In determining whether or not a defendant in this case had knowledge that the goods were stolen, you should consider all of the circumstances attending the possession of the goods by the accused, if you find that they were possessed by the accused. Now, that relates to Counts 1 and 3 of the indictment.

Now, as to Counts 2 and 4, before you can find either defendant guilty under the charges contained in Counts 2 and 4 of the indictment, the Government must prove beyond a reasonable doubt each of the 4 following items:

First, that the defendants, or one of them, either of the defendants, a particular defendant, knowingly transported, actively participated in or aided in transporting in interstate commerce from the City of Chicago in Illinois, to the City of Detroit, in Michigan, the merchandise described in Counts 2 or 4; 1033

Second, that the merchandise so transported had theretofore been stolen;

Third, that the said merchandise at the time it was transported from Chicago, Illinois to Detroit, Michigan, was of a value of more than \$5000; and

Fourth, that the defendants at the time the said merchandise was transported knew that it was stolen merchandise.

If the Government successfully proves all four of those items with reference to either Counts 2 or 4 beyond a reasonable doubt against either or both defendants, then you can find such a defendant guilty on such count. If the Government fails to prove to your satisfaction beyond a reasonable doubt any of the aforementioned 4 items or facts, then you must find the defendants not guilty on the charges contained in Counts 2 and 4.

The law provides that whoever commits an offense against the United States or aids, abets, counsels, commands, induces, or procures its commission, is a principal; that whoever causes an act to be done by another which, if directly performed by him, would be an offense against the United States, is also a principal, the same as if he had committed the act before.

I refer to value in discussing Counts 2 and 4. The value of the property which must be determined by you under Counts 2 and 4 is the market value at the time of the alleged theft. The market value of goods is the price at which the owner of the goods or the producer holds them for sale; the price at which they are frequently offered in the market to all the world; such prices as dealers in the goods are willing to receive and purchasers are required to pay, when the goods are bought and sold in the ordinary course of trade.

In determining the value under Count 2 and Count 4 of the indictment, you must consider the language of the Statute, which reads as follows, in that regard:

“ ‘Value’ means the face, par, or market value, whichever is the greatest, and the aggregate value of all goods, wares, and merchandise, securities and 1035 money referred to in a single count shall constitute the value thereof.”

In other words, the value of the entire amount charged in a count is what determines the value in construing this Statute.

In determining the value referred to, you should consider the testimony of the witnesses who testified as to the value, their apparent knowledge of the value, and their ability to know the facts about which they testify. You should also consider their experience and familiarity with these matters, and then you determine the value of the merchandise described in those Counts.

Now, there are two defendants before you for trial. The guilt or innocence of the defendants is to be determined

separately, and as to each defendant, only that evidence which was admitted by the Court against the respective defendant is to be considered in determining his individual innocence or guilt.

Conversations of the defendants have been received in evidence. Conversations of either defendant out of the presence of the other defendant are to be considered only in regard to the guilt or innocence of the defendant engaging in such conversation, and are not to be considered by you in any manner with reference to the other defendant who was not present at such conversation.

The only charges pending against these defendants for determination by the jury are the charges in the indictment which I have just read to you, and the jury is not to consider any evidence concerning film not mentioned in the indictment, other than as a circumstance that may relate to the guilt or innocence of the defendants with regard to the charges in the Counts in the indictment.

Thus, testimony has been admitted in this trial as to an event on July 22, 1950. You will remember that the indictment charges in Counts 1 and 2 an event occurring or alleged to have occurred on July 20, and in Counts 3 and 4 an event alleged to have occurred on July 27. The indictment charges nothing as occurring on July 22nd.

Now, as to the testimony admitted with reference to that event occurring on July 22, insofar as the defendant MacLeod is concerned, you are to completely disregard that testimony, because it related only to the other defendant, Gordon. Neither are you to consider such evidence against the defendant Gordon as any proof of the substantive offenses charged in the indictment on July 20, and July 27. The indictment does not charge any offenses against either of these defendants as occurring on July 22, 1950. The testimony of the event on July 22nd was admitted solely on the question of intent on the part of the defendant, Gordon, and any testimony as to that occurrence, if you believe it did occur, is to be considered by you for that purpose and for no other purpose.

Now, the defendants in this, as in every other criminal trial, come to court presumed to be innocent, and that presumption protects them until such time as when the jury shall believe from the evidence beyond a reasonable doubt that the defendants, or either of them, is guilty as charged

in the indictment. The guilt of an accused is not to be inferred because the facts proved are consistent with his guilt, but on the contrary, before there can be a verdict of guilty you must believe beyond a reasonable doubt that the facts proved are inconsistent with his innocence. If the two conclusions can reasonably be drawn from the evidence, one of innocence and one of guilt, you should adopt the former.

The defendants have pleaded not guilty. This puts 1038 the burden of proving the charges and every material allegation in the indictment upon the Government, and you cannot find the defendants or either of them guilty unless from the evidence you believe such defendant or defendants guilty of the offenses charged in the indictment, or some one of the offenses charged in the indictment, beyond a reasonable doubt.

A reasonable doubt is what the term implies, a doubt founded upon reason. It does not mean every conceivable kind of a doubt. It does not mean a doubt that may be purely imaginary or fanciful, or one that is merely captious, or speculative. It means simply an honest doubt that appeals to reason and is founded upon reason. If, after considering the evidence in this case, you have such a doubt in your mind as would cause you or any other reasonable or prudent man or woman to pause or hesitate in a grave transaction of your own life, then you have such a doubt as the law contemplates is a reasonable doubt.

You are the sole judges of the credibility of and the weight which is to be given to the testimony of the witnesses who have testified upon this trial. In weighing the testimony of each witness, you should give it careful 1039 scrutiny and consider all of the circumstances under which the witness testified; his or her demeanor on the stand; the relation which he or she bears to the Government or to the defendants, or either of them; the manner in which he or she might be affected by the verdict; his or her manner of testifying; his or her apparent candour and fairness or lack thereof, the reasonableness or unreasonableness of his or her story, the witness' apparent intelligence or lack of intelligence, the extent to which she or he is contradicted or corroborated by other credible evidence, and, in short, any circumstances that tend to throw light upon his or her credibility. Applying the test which

I have just stated, it is for you to determine the weight which is to be given to the testimony of each witness.

If you believe that any witness has knowingly and willfully testified falsely as to any matter material to the issues in the case, you may disregard entirely the testimony of such witness, except insofar as it has been corroborated by other credible evidence or by facts and circumstances proved on the trial.

A number of witnesses alone testifying for one side or the other, should not determine, in your minds; the
1040 question of the guilt or innocence of the defendants.

That question must be determined by you after a full consideration of all of the evidence in the case.

You are not bound to believe something to be a fact simply because a witness has stated it to be a fact, if you believe from all of the evidence that such witness is mistaken, or has testified falsely concerning such alleged fact.

Circumstantial evidence is relied upon in part by the Government to establish the guilt of the defendants in this case. What is meant by circumstantial evidence in a criminal case is that proof of such facts and circumstances connected with or surrounding the commission of the crime and act charged, tends to show the guilt or innocence of the party charged, and if these facts and circumstances are sufficient to satisfy the jury of the guilt of the defendants or either of them, beyond a reasonable doubt, then such evidence is sufficient to authorize the jury to find such defendant guilty. The law sanctions the conviction whenever there is legal evidence to show the defendants guilty beyond a reasonable doubt, and circumstantial evidence is legal evidence.

1041 In order to warrant a conviction on circumstantial evidence alone, each fact necessary to the conclusion sought to be established must be proven by competent evidence beyond a reasonable doubt, and all the facts—that is, the facts necessary to the conclusion must be consistent with each other and with the main fact sought to be proved, and the circumstances taken together must be of a conclusive nature leading, on the whole, to a satisfactory conclusion, and producing, in effect, a reasonable and moral certainty that the accused committed the offense charged. It is not sufficient that the circumstances coincide with, account for, and therefore render probable the guilt of the defendants; they must exclude every other reasonable hypothesis except that of the defendants' guilt.

In considering this case and in passing upon your verdict, you are not required to set aside your own observation and experience as men and women in the affairs of life, but, on the other hand, you have a right, in considering all of the evidence, to use your common observation and the experience as men and women in the affairs of life; to say where the truth lies upon any material fact in the case.

Under the instruction which I have given you here-1042 tofore, you should scrutinize carefully the testimony of any witness who, as a Government witness, incriminates himself with others in the offense charged. The evidence of such a witness ought to be received with the very greatest care and caution, and subject to the same rules which I have given you governing other witnesses.

The law is that the jury shall consider the testimony of an accomplice and may, if the evidence warrants, find the defendant guilty upon the testimony of any accomplice alone. However, before you would be justified in arriving at a verdict upon the uncorroborated testimony of the witness Marshall alone, you should find his testimony to be clear and convincing, and to possess the characteristics of truth, and together with all other evidence in the case, convince you beyond a reasonable doubt.

Both defendants in this case have taken the stand and have testified. The defendant cannot, in a criminal case, be compelled to take the witness stand and to testify. He may do so, or he may not do so.

Whether he testifies or does not testify is a matter of his own choosing. When, however, a defendant elects to-1043 take the witness stand and testify, then you have no right to disregard his testimony merely because he is accused of a crime. When he does testify, he at once becomes the same as any other witness, and his credibility is to be tested by and subjected to the same tests as are legally applied to any other witness.

In determining the degree of credibility that should be accorded to his testimony, the jury has a right to take into consideration the fact that he is interested in the results of the prosecution, as well as his demeanor and conduct on the witness stand, and all the other elements which I have heretofore referred to which may be considered by the jury in testing the credibility of other witnesses.

It is the right and privilege of a person who is being